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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1227. ~~845~~ ~~415~~ 87

THE MONROE CATTLE COMPANY, APPELLANT,

vs.

A. W. BECKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED SEPTEMBER 16, 1889.

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1 United States Circuit Court, Northern District of Texas, at Dallas. In Chancery.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER.
} No. 137, Equity.

Original Bill.

Filed Feb'y 1, 1888.

A. J. HOUSTON, *Clerk.*

J. R. Fleming, Leake & Henry, plaintiff's solicitors.

2 UNITED STATES OF AMERICA,
Northern District of Texas.

To the judges of the circuit court of the United States for the northern district of Texas, at Dallas:

The Monroe Cattle Company, a private corporation duly created and organized under the general laws of the State of Texas, having its domicil and place of business in the town of Albany, county of Shackelford and State of Texas, and a citizen of the State of Texas, brings this its bill against A. W. Becker, a citizen of the State of Illinois, residing in the city of Chicago, in said State; and thereupon your orator complains and says:

I. That by an act of the Legislature of the State of Texas, approved April 6, A. D. 1881, amending an act of the same Legislature, approved July 8, 1879, providing for the sale of alternate sections of land in the organized counties of said State, surveyed by railroad companies, and other works of internal improvement and set apart for the benefit of the school fund, the method of bringing such lands into market was provided, and previous to the year A. D. 1882
3 such method was pursued and all necessary precedent acts were performed so as to bring all such lands lying in the county of Shackelford, in said State, and especially the following-described sections of land, which were then and there alternate sections of land set apart for the benefit of common schools, into market.

II. That said sections of land hereinafter referred — had been previous to the year 1882 surveyed by virtue of valid land certificates issued by the State of Texas to the East Texas Railroad Company, a railroad corporation, by and for said railroad company.

III. That previous to the beginning of the year A. D. 1882, all precedent acts having been performed as directed and required by said acts of the Legislature of Texas, the surveyor of Shackelford county had received the notice provided for in section four of said act, approved April 6, A. D. 1881, which notice being given him, the said surveyor was authorized to receive applications for the purchase of said sections of school land.

That the sections of land hereinafter referred to as the land claimed by your orator and for which this suit is brought are alter-

nate sections of land surveyed by the East Texas Railroad Company, and had been, before the applications to purchase the same, hereinafter referred to, under which your orator claims, were made, set apart by the laws of Texas for the benefit of common schools, and the county surveyor of said county of Shackelford had reviewed and appraised said lands and all the alternate sections in said county set apart for the benefit of common schools under oath, and made return of the same to the county commissioners' court of said county of Shackelford, which court had approved the same, and said lands now claimed by your orator, they not bordering on or having fresh water on them, were appraised at one dollar per acre. The said lands were unimproved prior to the 6th of April, A. D. 1881, and as soon as said appraisement was completed said county commissioners' court prepared such tabular report thereof as the law required, one copy of which report was filed in the office of the county surveyor of Shackelford county, and one copy thereof was forwarded to and filed in each of the offices of the commissioner of the general land office and the treasurer of the State of Texas, in all of which offices they remain as archives, and said commissioner of the general land office, upon the receipt of said report, approved the same and notified the county surveyor of Shackelford county of that fact, all of which was done before the applications to purchase by Malinda Fisher and F. B. Jacobs, hereafter referred to, were made.

IV. That said sections of land, hereinafter described, had been, under said law, classed as land suitable only for grazing purposes, and that said law required such land to be sold in quantities to suit the purchaser; but it provided also that "no person shall be permitted to purchase less than one hundred and sixty acres nor more than three sections of six hundred and forty acres within five miles of the geographical center of any county or upon any water front, nor more than seven sections at any other place;" that none of the sections hereinafter described were within five miles of the geographical center of said county of Shackelford, and none of them are situated on any water front.

V. That by section six of said amendatory act it was provided:

SEC. 6. "That any person desiring to purchase any of the above lands shall make application to the county or district surveyor, designating the number of the survey, block, name of company or individual to whom was issued the certificate by virtue of which such survey was made; the quantity he or she wishes to purchase, and, if less than a whole section, the particular part of such section: Provided, that no fraction of any section of less than one hundred and sixty acres shall be left by any such selection, and that no fractional section of less than three hundred and twenty acres shall be divided. The surveyor shall be entitled to a fee of one dollar for each application, to be paid by the applicant, and he shall, upon payment of said fee, record said application in a well-bound book, to be kept by him for that purpose. He shall endorse such application 'recorded,' giving the date, page, and

volume of the record, and sign his name thereto, and deliver said application to the proposed purchaser."

VI. The section seven of said amendatory act provides as follows, to wit:

SECTION 7. "That the purchaser shall immediately forward to the State treasurer the above application, together with the one-twentieth of the appraised value of the land therein designated, and if the land is chiefly valuable for timber he shall forward the whole of the appraised value.

The treasurer shall enter a credit in his books in the name of the purchaser for the amount so received, giving such description of the land as will identify the same. He shall then issue his receipt for said amount and forward it, with the above-named application, to the commissioner of the general land office, who shall file said application and receipt in his office and issue his receipt in lieu thereof, setting forth the amount paid to the treasurer and the quantity and valuation of the land applied for, which certificate shall authorize the county or district surveyor to survey the land em-
6 braced in the original application, and enter the same on his books as sold, and shall not entertain another application to purchase said land until notified of the forfeiture as hereinafter specified: Provided, should the applicant fail to make his first payment of one-twentieth or the whole, as the case may be, of the appraised value of the land embraced in his application to the treasurer, and present the certificate of the commissioner of the general land office to the surveyor or his deputy within ninety days from the date of the record of his application, then and in that case the said land shall be again for sale, and the surveyor shall be authorized to receive applications for the same: Provided, that no person shall renew his file nor file on the same land more than once in twelve months, nor shall any person renew his file in the name of any other person. All applications for the purchase of said lands shall be made in the real name of the person intending to be the actual purchaser thereof."

VII. That by the eighth section of said amendatory act it is provided as follows, to wit:

SECTION 8. "That so soon as the application above named has been received by the surveyor the applicant shall execute his obligation or promissory note for the balance of the appraised value of the land he desires to purchase, agreeing and stipulating to pay to the Governor of the State of Texas and his successors in office, on the first day of January of each year, one-twentieth of the amount of his obligation or promissory note, with eight per cent. interest on such amount of the principal as may be due at the date of each payment, giving in such obligation such description of the land pur-
chased as is contained in his application: Provided, that the
7 purchaser may have the privilege of paying the entire amount of the appraised value of said land at the date of purchase or such amount of principal and interest as may be due at any time subsequent to the execution of his obligation or promissory note: Provided, that any payment of principal may be deferred for

one or more years, except the first one-twentieth, but all payments of both principal and interest must be paid inside of twenty years, and all interest must be paid annually on or before the first day of March of each year."

VIII. That section nine of said original act, approved July 8, 1879, still in force, provides as follows, to wit:

SECTION 9. "That the note or obligation so executed by the purchaser shall be forwarded to the commissioner of the general land office, and he shall have the same registered in a well-bound book kept for that purpose, setting forth the name of the purchaser, the amount and date of the obligation or note, the tract or tracts for which it is given, and the county in which situated, and shall then endorse the same 'registered,' with the date of such registry, sign his name thereto, and deliver the same to the treasurer of the State, who shall carefully file the same in his office."

IX. That the tenth section of said act provides as follows, to wit:

SECTION 10. "That upon the presentation of the certificate of the commissioner of the general land office, provided for in section seven of this act, to the surveyor or his deputy, the said surveyor shall immediately proceed to survey the land embraced in the original application of the purchaser. He shall record the field-notes of such survey or surveys in his office and forward the same,
8 duly certified, to the commissioner of the general land office, who shall file the same with the application and treasurer's receipt of said purchaser For the surveying and recording herein provided for the surveyor shall be entitled to the legal fees provided by law to be paid by the purchaser: Provided, that when the field-notes are on file in the general land office the applicant shall not be required to have the same surveyed."

X. That section eleven of said original act provides substantially that the commissioner of the general land office shall keep an account with the purchaser of said lands "showing the amount for which the original obligation was given and the interest accruing thereon, and that the State treasurer, upon the payment of the amount due by such purchaser, shall execute his receipt for the same in the name of the purchaser, and deliver said receipt to the commissioner of the general land office, who shall credit the account of said purchaser with the amount so paid and forward his certificate of such payment to the purchaser."

XI. Section fifteen of said original act provides as follows, to wit:

SECTION 15. "That in case any purchaser desires to sell said land after he has made his first payment on the same he may do so, but in that event his vendee shall file in the general land office a properly authenticated transfer from said purchaser, and said vendee shall be liable to the obligations and penalties imposed upon said original purchaser, and upon final and full payment on any purchase made under the provisions of this act the commissioner of the general land office shall issue a patent to the purchaser making the same or to his venders."

9 XII. That the lands above described as belonging to the common school fund and situated in said county of Shackel-

ford are known as surveys numbered respectively 46, 120, 122, 116, 62, 64, 66, 76, 162, 68, and 96. Said surveys were made in the order named by virtue of the following-numbered land certificates, to wit, 158, 255, 256, 253, 166, 167, 168, 173, 21, 363, 169, 200, each survey being otherwise called a section and containing six hundred and forty acres.

XIII. That all of said sections were properly classed under the law "as land suitable only for grazing purposes," and none of said lands were ever chiefly valuable, or valuable at all, for timber.

XIV. That the field-notes of all of said sections of land were on file in the general land office of the State of Texas previous to and ever after the first day of January, A. D. 1882.

XV. That one J. A. Rhomberg, having conceived, as your orator is informed, believes, and charges, the purpose of acquiring more of the public school lands of the State of Texas than the law allowed him to so acquire by purchasing directly from the State, and also to evade the provisions of the aforesaid law with regard to purchases being made in the real name of the applicant, and to fraudulently avoid and disregard that other provision of said laws "that no person shall renew his file nor file on the same land more than once in twelve months, nor shall any person refile or renew his file in the name of any other person," at different periods during the year 1882, made applications in the names of different persons, pretending to act as their agent or by their authority, to the county surveyor of said county of Shackelford for the purchase of each of said sections of land and paid the surveyor the fee required by law for the applicant to pay to the surveyor on filing his application, whereupon in each instance said surveyor recorded such application and endorsed the same and signed his name thereto and delivered the same to the said J. A. Rhomberg, or to his agent, in all respects as the law governing the case and as above recited requires; but the said J. A. Rhomberg did not, nor did any of the pretended purchasers of any of said lands at any time during the year 1882, or at any time before the first day of March, A. D. 1883, as your orator is informed, believes, and charges, pay to the treasurer of the State of Texas the first payment that the law required to be made in such cases, nor, in fact, any sum of money; nor did the said J. A. Rhomberg or any of said pretended purchasers, or any person for them, cause to be procured the certificate of the commissioner of the general land office of the State of Texas, nor did he or they or any of them present such certificate of the commissioner of the general land office to the surveyor of Shackelford county within ninety days of the date of recording said applications, or any of them, and, in fact, except to make an application to the county surveyor of Shackelford county for the purchase of said lands and the payment to said surveyor of his fee of one dollar therefor, the said J. A. Rhomberg did not, nor did any of the pretended applicants to purchase, do or cause to be done, anything required by said acts of the Legislature to be done, except as will be hereinafter averred. The names in which said applications to purchase were made by the said J. A. Rhomberg and the dates of such applications and the

particular sections of land sought to be purchased in each case will be hereinafter more particularly specified.

XVI. That the applications referred to in the last preceding paragraph of this bill (XV) were made in the following names, at the following dates, and for the following sections, to wit:

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On the 28th day of February, A. D. 1882, in the name of F. Beeker, for said sections 62, 66, 76, 68, and 64, and on the same date, in the name — S. L. Rhomberg, for said sections numbered 120 and 122, and on same date, in the name of Conrad Beeker, for said sections numbered 116, 162, and 46; on the 29th day of May, A. D. 1882, in the name of J. M. Beechem, for said sections numbered 64, 68, 76, 66, 62, 96, 116, and on the 30th day of May, 1882, in the name of M. B. Thompson, for said sections numbered 122, 162, 120, and 46, and on the 28th day of August, A. D. 1882, in the name of Margaretta Rhomberg, for said sections numbered 76, 116, 68, 96, 64, and 62, and on the 28th day of August, A. D. 1882 (same date), in the name of F. M. Robinson, for said sections numbered 122, 162, 120, and 46, and on the 25th day of November, A. D. 1882, in the name of Frank Robinson, for said sections numbered 162, 122, 120, and 46, and on the 25th day of November, A. D. 1882, in the name of Maggie L. Rhomberg, for said sections numbered 66, 68, 76, 62, 96, 64, and 116.

XVII. That the persons whose names were used in making said applications or any one of them were not, as your orator believes and charges, in any instance "the persons intended to be the actual purchaser of said lands" or any of them, but the said J. A. Rhomberg, as your orator believes and charges, was the person intended to be the actual purchaser of each and every section of said lands.

XVIII. That the said J. A. Rhomberg caused each and every one of said applications to be made and conducted all correspondence and gave all instructions with regard thereto in his own name, and, in his correspondence with the surveyor, openly claimed that the lands applied for were so applied for by him and for his own benefit, and would belong to him and be subject to his control and disposition, and all fees of officers and purchase-money relating thereto were paid, when paid at all, and tendered, when tender was made, by the said J. A. Rhomberg.

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XIX. That the said J. A. Rhomberg, who made or caused to be made all of said applications, purposely and in more than one instance avowedly let the ninety days within which he was required to make first payment for said lands and return the certificate of the commissioner of the general land office to the surveyor of Shackelford county expire without performing either of said acts, intending thereby fraudulently to prevent other people from purchasing said lands during said ninety days and to make application in the names of other persons about the time of the expiration of the ninety days, all the while intending the purchases for his own benefit and not for the benefit of the persons whose names he was using, and this course he pursued from the 28th day of February, A. D. 1882, to the end of the year A. D. 1882, keeping during all of said

time, by the use of said artifice and fraud, other people from purchasing said land and depriving the State of its revenue therefrom and failing to purchase or pay for any of them himself; and as for said pretended applicants to purchase, none of them, so far as your orator is informed and believes and upon such information and belief charges, ever did any act toward purchasing, paying for said lands, or preventing the applications in their names from being forfeited.

XX. That the said J. A. Rhomberg, while in the act of
13 making said applications to purchase and conducting the correspondence thereabout with the surveyor of Shackelford county, not only claimed and disclosed that said lands were being purchased for his benefit and would belong to him, but disclosed his purpose and intention to be to let his applications be forfeited with the view of making other applications for the same lands in other names, which he did, but also disclosed that his purpose by the delay was to defraud the State from the collection of its proper taxes on said land, and at the same time, for the purpose of unduly influencing said surveyor in his behalf, forwarded to him double the sum of money required for each application, and held out to him hopes of further profit by proposing to make him, the surveyor, his agent for the sale of said lands.

XXI. That the ninety days given the applicants for the purchase of said lands made, as aforesaid, on the 28th day of August, A. D. 1882, each and all of which said applications were recorded by the said surveyor of Shackelford on the 28th day of August, A. D. 1882, in the proper record book of his office and in all respects as required by the above-cited acts of the Legislature, had not expired on the 25th day of November, A. D. 1882, and therefore said lands were not on that day nor the day after subject to be sold to any other purchaser.

XXII. That by reason of applications for the purchase of all of said sections of land having been made to the surveyor of Shackelford county on the 28th day of August, A. D. 1882, and of said applications having been, as they were, duly recorded by said surveyor on the same date (the 28th August, A. D. 1882), and the ninety days allowed by the law to make his first payment to the treasurer
14 for said land and return to the surveyor of Shackelford county the certificate of the commissioner of the general land office not having expired on the 25th day of November, A. D. 1882, as, in fact, the ninety days from the recording of said application of the 28th day of August, A. D. 1882, had not then expired and had not expired when the aforesaid applications of Maggie L. Rhomberg and Frank Robinson were made to purchase the same land to said surveyor and by him received and recorded, the said sections of land were each and all on said 25th day of November, A. D. 1882, and were when the said Maggie L. Rhomberg and Frank Robinson made their applications aforesaid, or when applications were made in their names as aforesaid, entered upon the books of said surveyor as "sold," and the said surveyor was then forbidden by law from entertaining another application to purchase any of said lands.

XXIII. That applications were made as aforesaid to the surveyor of Shackelford county for the purchase of each and all of the aforesaid sections of land in the names of the said Margaretta Rhomberg and Frank Robinson (except for section No. 66), and said applications were by the said surveyor duly recorded in the proper record book of his office on the 28th day of August, A. D. 1882.

That on the 25th day of November, A. D. 1882, the said applicants to purchase had not failed to make their first payment of one-twentieth of the appraised value of the land embraced in their said applications to the treasurer of the State of Texas within ninety days from the date of the record of their applications, nor had any one of them failed on said 25th day of November, A. D. 1882, to present to the surveyor of Shackelford county or to his deputy, within ninety days from the record of their applications to
15 purchase made as aforesaid, the certificate of the commissioner of the general land office of the State of Texas, and on said 25th day of November, A. D. 1882, the surveyor of Shackelford county had not been notified of the forfeiture of the applications to purchase said sections of land made and recorded, as aforesaid, on the 28th day of August, A. D. 1882, and on said 25th day of November, A. D. 1882, said applications to purchase, recorded on the 28th day of August, A. D. 1882, had not been forfeited, and on said 25th day of November, A. D. 1882, said sections of land were not for sale under the law, and the surveyor of Shackelford county was not on said last-mentioned date authorized to receive application for the purchase of the same or any of said sections or any part thereof.

XXIV. That the said Margaretta Rhomberg and the said F. M. Robinson did not nor either of them, nor did any person for them or either of them, make the first or any payment to the treasurer of the State of Texas for said land within ninety days from the 28th day of August, A. D. 1882, nor did they or any of them, or any person for them or any of them, within said time present to the said surveyor or his deputy the certificate of the commissioner of the general land office, as required by the above-recited acts, wherefore at the expiration of ninety days from the 28th day of August, A. D. 1882, said lands became again for sale under the law, and said surveyor thereafter and not before authorized to again receive applications for their purchase, but no application was made subsequently to the 25th day of November, A. D. 1882, for their purchase until the — day of January, A. D. 1883, when such application was made by the assignors of your orator as will be hereinafter alleged. And so it is your orator charges that at the expiration of ninety
16 days from the 28th day of August, A. D. 1882, all of the above numbered and described sections of land became and were subject to sale under and in pursuance of the above-recited acts of the Legislature of Texas, and subsequent to that date neither the defendant herein or any one under whom he holds has ever made any application to purchase or purchased said lands or any part of them, but your orator's assignors, and they have since the expiration of said ninety days, and when they were for sale under

the law, purchased all of said lands under and in pursuance of the law.

XXV. That, besides the applications to purchase the aforesaid sections of land, the said J. A. Rhomberg, during the year A. D. 1882, in the names of the same persons and in the names of various other persons, made applications to purchase other and different sections of such school lands for sale under said laws, lying in said county of Shackelford and in other counties of the State of Texas, as your orator is informed, believes, and charges, amounting to hundreds of sections of land, and the said J. A. Rhomberg made all payments of money that were paid on account of such lands, and was, as your orator believes, the real purchaser thereof.

XXVI. That the pretended purchasers, or rather the purchasers whose names were used by the said J. A. Rhomberg, as aforesaid, to purchase the above-numbered sections, whose applications to purchase were made on the 25th day of November, A. D. 1887, to wit, the said Maggie L. Rhomberg and the said Frank Robinson, by their respective deeds, those of the said Maggie L. dated the 28th day of February, A. D. 1885, and those of the said Frank Robinson dated the 5th day of March, A. D. 1885, pretended to convey
17 the said lands, each making a separate deed for each separate section, each deed being made for the purported consideration of one hundred and thirty-two dollars, the deeds of the said Maggie L. Rhomberg being made to John H. Klein for sections numbered 76, 68, 96, 64, 66, 62, and 116, and the deeds from Frank Robinson being made to R. S. Hoglen for said sections numbered 122, 162, 120, and 46; that the considerations paid and recited to be paid in said deeds for said lands were entirely inadequate, each of said sections then and there pretended to be sold and conveyed for one hundred and thirty-two dollars being then and there worth more than two dollars per acre, or twelve hundred and eighty dollars per section.

Your orator believes and charges that the said J. A. Rhomberg caused said conveyances to be made to the said Klein and Hoglen for his own uses and purposes, he being still interested in said lands and having paid all expenses attending the purchase of the same which had not been reimbursed to him by the pretended original purchasers of said land, and that the consideration of one hundred and thirty-two dollars for each section, then and there pretended to be paid to the said Maggie L. Rhomberg and the said Frank Robinson, was not, in fact, paid them, or if it was paid to them or either of them it was not paid to them as the owners and real vendors of said land, but only as consideration for allowing the said J. A. Rhomberg to use their names as the pretended purchasers of said lands, of all which the said Klein and Hoglen then and there had notice, as your orator believes and charges.

XXVII. That afterwards, on, to wit, the 13th day of March, A. D. 1885, the said John H. Klein pretended to sell and did convey the lands so conveyed to him by Maggie L. Rhomberg to the said
18 R. S. Hoglen for the pretended and recited consideration of four hundred and seventy-five dollars for each section, which

was an inadequate consideration therefor; and your orator believes, and believing charges, that said last-named conveyances were made at the instance of and for the use and benefit of the said J. A. Rhomberg as the real and beneficial owner thereof, and if the pretended consideration or any part of it was actually paid that it was done by or through the agency of the said J. A. Rhomberg, of all of which your orator believes the said Hoglen then and there had notice.

XXVIII. That afterwards, on, to wit, the 28th day of April, A. D. 1886, the said R. S. Hoglen pretended to sell and did convey to defendant, A. W. Becker, all of said sections of land for the consideration, as expressed in said deed, of six hundred and forty dollars for each section. Your orator charges that between the dates of the conveyances of lands made as aforesaid to said Hoglen and said conveyances by him to the defendant the said lands had not appreciated in value, but they were still worth more than one dollar per acre; and your orator believes, and believing charges, that said pretended conveyances to defendant were negotiated and brought about by the said J. A. Rhomberg, he being then and there still the real and beneficial owner of said lands, and that the conveyances to defendant were made for the use and benefit of the said J. A. Rhomberg for the purpose and with the intent of violating said laws and procuring patents for said lands, of all which the defendant then and there had notice and participated in.

XXIX. That all of the above-numbered sections being unsold and subject to be purchased by them under the above-recited acts of the Legislature of Texas on the second day of January, A. D. 1883 (and on the eighth day of January, A. D. 1883, those of said sections not purchased by F. B. Jacobs being vacant), on the 2nd day of January, A. D. 1883, the said F. B. Jacobs filed his application in form and manner as prescribed by the above-recited
19 acts of the Legislature of the State of Texas in the office of the surveyor of said county of Shackelford, seeking to purchase the following sections of the above-described lands—that is to say, the surveys numbered 122, 68, 66, 64, 46, 120, and 62, and at the same time paid to said surveyor one dollar for each application, each section being applied for separately, and thereupon said surveyor duly recorded each of said applications on the 2nd day of January, A. D. 1883, in the proper record book of his office, and endorsed on said application the word "recorded," giving the date, page, and volume of the record, and signed his name thereto, and delivered said application to the said F. B. Jacobs.

XXX. That the said F. B. Jacobs immediately forwarded to the treasurer of the State of Texas the said application, together with one-twentieth of the appraised value of the land therein designated, and said treasurer entered a credit in his books in the name of said F. B. Jacobs for the amount so received, giving such description of each of said last-named sections as would identify them, and then he, the said treasurer, issued his receipts for said amounts and forwarded them, with the above-named applications, to the commissioner of the general land office of the State of Texas, who (the said commissioner of the general land office) filed said receipts and appli-

cations in his office and issued his certificates in lieu thereof, setting forth the amounts paid to the treasurer and the quantity and valuation of the land applied for, which said last-named certificate the said F. B. Jacobs presented to the surveyor of said county of Shackelford within ninety days from the date of the record of his applications as aforesaid.

XXXI. That on the 8th day of January, A. D. 1883, the said Malinda Fisher filed her application, one application for each section, in due form of law, as specified by the above-referred-to acts of the Legislature, with the surveyor of said county of Shackelford, to purchase the following sections of the above-described lands—that is to say, the surveys numbered 76, 162, 116, 96, and at the same time paid to said surveyor one dollar for each of said applica-
20 tions, and thereupon said surveyor duly recorded each of said applications in the proper record book of his office on the 8th day of January, A. D. 1883, and endorsed on each of them the word "recorded," giving the date, page, and volume of the record, and signed his name thereto, and delivered said applications to the said Malinda Fisher.

XXXII. That the said Malinda Fisher immediately forwarded to the treasurer of the State of Texas each of said applications, together with one-twentieth of the appraised value of each section of said land therein designated, and the treasurer thereupon performed the acts and made the entries required by law, and of the same character alleged above with regard to the F. B. Jacobs surveys, and issued his receipts for the amounts paid him by the said Malinda Fisher, and forwarded said receipts, together with said applications, to the commissioner of the general land office of the State of Texas, who filed said applications and receipts in his office and issued his own receipt in lieu thereof, setting forth the amounts paid to the treasurer and the quantity and valuation of the lands applied for, which certificate of the commissioner of the general land office the said Malinda Fisher presented to the surveyor of said Shackelford county within ninety days from the date of the record of her application as aforesaid.

XXXIII. That after receiving said certificates from the commissioner of the general land office and within less than ninety days of the recording as aforesaid of the said applications of F. B. Jacobs and Malinda Fisher, respectively, the said surveyor of Shackelford county entered all of the aforesaid eleven sections of land on his books as sold.

XXXIV. That so soon as the applications above named had been received by the surveyor of Shackelford county the said F. B. Jacobs and Malinda Fisher executed their respective obligations, each one for the balance of the appraised value of the sections of land above referred to that he or she desired to purchase, therein agree-
21 ing to pay to the Governor of the State of Texas and his successors in office, on the first day of January each year, one-twentieth of the amount of his or her obligation for each section, with eight per cent. interest on such amount of the principal as should be due at the time of each payment, giving in each obliga-

tion such description of the land purchased as was contained in the application.

XXXV. That said obligations of the said F. B. Jacobs and Malinda Fisher were forwarded to the commissioner of the general land office, as prescribed by the above-recited section nine of the act of the Texas Legislature, and were each duly registered and endorsed by said commissioner, as directed by said section of said act, and, said endorsements having been signed by the said commissioner, the said obligations were delivered to the treasurer of said State, by whom they were filed in his office on the — day of ——, A. D. 1883, and such of them as have not been paid now remain on file in said office; that each and all of said obligations that have matured have been discharged and paid off as they have matured, as well as all matured interest thereon.

XXXVI. That after the payment of the first installment of the purchase-money of the said sections of land by them respectively purchased as aforesaid the said F. B. Jacobs and the said Malinda Fisher assigned and conveyed to your orator by their respective deeds in writing all of the aforesaid eleven sections of land. Said sections numbered 96, 116, 76, and 162 were conveyed to your orator by the said Malinda Fisher by her deed dated the 12th day of March, A. D. 1883, the said Malinda Fisher being joined in making said deed by her husband, Jno. A. Fisher, and said sections numbered 122, 68, 66, 64, 46, 120, and 62 were conveyed to your orator by the said F. B. Jacobs by his deed dated the 12th day of March, A. D. 1883.

XXXVII. That after the purchase of said lands as aforesaid, in the month of January, A. D. 1883, by the said F. B. Jacobs and Malinda Fisher, and after they had made their first payments for the same and executed their obligations for the balance as aforesaid, no payments having been made or tendered up to that time by any other purchaser, real or pretended, the said J. A. Rhomberg, pretending to act for the said Maggie L. Rhomberg and Frank Robinson, tendered to the said State treasurer the first payment for said lands under their pretended purchases, under applications made and recorded as aforesaid on the 25th day of November, A. D. 1882, which tenders were made within ninety days from said 25th day of November, A. D. 1882, but said treasurer refused to receive said money or to recognize the said Maggie L. Rhomberg and Frank Robinson as the purchasers of said land, but then ruled that the said F. B. Jacobs and Malinda Fisher were the purchasers and owners of all of said sections of land until they transferred the same, and after they had transferred said lands said treasurer continued for several years to recognize the assignees of the said F. B. Jacobs and Malinda Fisher to be the owners of said lands, and as such owners and purchasers received from them the annual payments thereon as they matured, and, though payments were tendered by the said J. A. Rhomberg for said Maggie L. Rhomberg and Frank Robinson, they were for several years refused by said treasurer.

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XXXVIII. That in fact the said Maggie L. Rhomberg and Frank

Robinson, nor either of them, nor any person for them or either, within ninety days from the date of the record of their applications, made the first payment for any of said lands or did any of the other things required by the said acts to be done by purchasers within ninety days from the date of the record by the county surveyor of their applications to purchase, whereby their claim, if any they ever had, which your orator denies, under said applications of the 25th day of November, 1882, were forfeited.

XXXIX. That several years afterwards, for reasons unknown to your orator, to wit, in the year A. D. 1886, the said treasurer changed and reversed his ruling with regard to the effect of the applications to purchase made in the names of the said Maggie L. Rhom-
23 berg and Frank Robinson on the 25th day of November, 1882, and accepted from their pretended assignee the whole of the purchase-money for said eleven sections of land and gave his receipt therefor; and on, to wit, the — days of May, June, and July, in the year A. D. 1886, on different days in said months, the commissioner of the general land office of the State of Texas issued to A. W. Becker, the defendant in this suit, patents for each and all of said sections of land numbered as aforesaid and purchased as aforesaid by said F. B. Jacobs and Malinda Fisher, which patents, having been approved by the Governor of the State of Texas, were recorded in said land office and delivered to the said A. W. Becker, as assignee, under a chain of transfers from the said Maggie L. Rhomberg and Frank Robinson, which patents were so issued, as your orator believes and charges, wrongfully and fraudulently, without authority of law and in disregard of its rights in the premises.

XL. That your orator has been in the actual possession of all of said sections of land, having them enclosed and using them for a pasture since the 12th day of March, A. D. 1883, continually claiming ownership thereof and paying the State and county taxes annually assessed against the same.

XLI. That on the 14th day of February, A. D. 1887, the said A. W. Becker filed in the United States circuit court for the northern district of Texas, at Dallas, on the law docket of said court, an action of trespass to try title against your orator to try the title to said lands, to dispossess your orator thereof (meaning the above-numbered eleven sections of land), and claiming of your orator five thousand dollars for the use and occupation of said lands. Your orator avers that each of said sections of land is of the value of one thousand dollars and more.

XLII. Your orator avers that the defendant, A. W. Becker, avers in his petition filed in said suit that he owns the legal title to all of said sections of land under and by virtue of said patents issued to him as assignee as aforesaid, and except which he does not in his pleadings assert any other or different title to any of said sections of land.

24 XLIII. That your orator has been duly cited to appear and defend said action, but he is advised that said patents give to the said A. W. Becker the legal title to said lands, and that your orator's right and title to said lands, while superior to the pretended

legal title of said Becker, are equitable titles and cannot be asserted and will not be heard in a court of law where the said Becker's case is now pending; wherefore the said A. W. Becker and his agents and attorneys ought to be enjoined from further prosecuting said suit at law against your orator.

XLIV. That said pretended patents issued as aforesaid to the said A. W. Becker are a cloud upon your orator's equitable title to said land, and while outstanding will prevent the full enjoyment of your orator's equitable titles thereto, as well as prevent it from acquiring legal titles thereto.

XLV. The premises considered, your orator prays that the said A. W. Becker, his counselors, attorneys, and agents, may be restrained by an injunction issuing out of this court from proceeding further against your orator in the said action commenced against it in the United States circuit court for the northern district of Texas, at Dallas, and now pending and at issue therein for the recovery of the possession of said premises, with their appurtenances; and also from instituting a proceeding in any new or other action at law for the recovery of the possession of said premises or any part thereof.

And that your orator may have a decree canceling and annulling the patents for said lands issued as aforesaid to said A. W. Becker.

And that your orator may have generally such other and further relief as the nature of its case may require.

May it please your honors to grant unto your orator the writ of injunction, issuing out of and under the seal of this court, directed to the said A. W. Becker, his counselors, attorneys, solicitors, and agents, commanding them and each of them absolutely to desist and refrain from proceeding further against your orator in the said action as above.

25 Therefore will your honors grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to said defendant, A. W. Becker, commanding him, by a certain day and under a certain penalty therein inserted, to appear before your honors in the aforesaid United States circuit court and then and there answer the premises and abide the order and decree of the court.

J. R. FLEMING,
LEAKE & HENRY,
Solicitors for Complainant.

STATE OF TEXAS, }
County of Shackelford, } *ss:*

On this 26th day of December, A. D. 1887, appeared G. F. Reynolds and made oath that he is the president of above-named Monroe Cattle Company, and says that he has read the above and foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and that as to those matters he believes it to be true.

G. F. REYNOLDS.

Subscribed and sworn to before me the 26 day of December, A. D. 1887, as witness my hand and official seal.

D. C. CAMPBELL,
[SEAL.] *Notary Public, Shackelford County, State of Texas.*

26 From the Minutes, January Term, 1888.

WEDNESDAY, *February* 1, 1888.

THE MONROE CATTLE CO. *vs.* A. W. BECKER. } No. 137, Ch'y.

Be it remembered that on this day came on to be heard in open court complainant's motion for an injunction, and both plaintiff and defendant appeared by their respective solicitors, and the court, having heard read plaintiff's original bill and the affidavit to the same and having heard the argument of counsel, considered and orders that a writ of injunction *pendente lite* issue as prayed for in said bill.

Feb'y 1st, 1888.

(Signed) DON A. PARDEE, *Judge.*

* * * * * * *

In the Circuit Court of the United States, Northern District of Texas.

THE MONROE CATTLE CO. *vs.* A. W. BECKER. } No. —. In Chancery.

And now, at this day, comes the defendant, A. W. Becker, by his solicitors, Robertson and Williams, and waives the issuance
27 and service of the process of subpœna now here — enters his appearance in said cause, and the said defendants further waives the service of the writ of injunction granted in said cause on February 1, 1888.

(Signed) A. W. BECKER,
By ROBERTSON AND WILLIAMS,
His Solicitors.

The foregoing is endorsed as follows:

No. 137, ch'y. The Monroe Cattle Co. *vs.* A. W. Becker. Appearance of defendant and waiver of process. Filed Feb'ry 2, 1888. (Signed) A. J. Houston, clerk, by Jas. D. Adams, deputy.

* * * * * * *

From the Order Book, April, 1889, Rules.

APRIL 2, 1888.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER. } No. 137. In Equity.

In this cause it is agreed that the time for the defendant to file his demurrer, plea, or answer to the complainant's bill of complaint shall be extended to the first Monday in April, A. D. 1888.
(M'ch 30, 1888.)
(Signed) LEAKE AND HENRY,
Solicitors for Compl't.
ROBERTSON & WILLIAMS,
Sol's for Defendant.

* * * * * * *

From the Order Book, April, 1889, Rules.

28 APRIL 2, 1888.

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137.

In this cause it is agreed that the time for the defendant to file his answer to the plaintiff's bill shall be further extended to the first Monday in May, A. D. 1888, being May 7, 1888.
(M'ch 30, 1888.)
(Signed) LEAKE & HENRY,
Sol's for Compl't.
ROBERTSON & WILLIAMS,
Sol's for Def't.

* * * * * * *

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY, Complainant,
vs.
A. W. BECKER, Defendant. } No. 137. In Chancery.

The Answer of A. W. Becker, Defendant, to the Bill of Complaint of The Monroe Cattle Company, Complainant.

This defendant, now and at all times hereafter reserving unto himself all benefit and advantage of exception which can or
29 may be taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto

or to so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says:

1. This defendant admits that it is true, as alleged by complainant in the first paragraph of its said bill, that previous to the year 1882 the method provided by the act of the Legislature of the State of Texas, approved July 8, 1879, and by the acts amendatory of said last-mentioned act, approved April 6, 1881, providing for the sale of the alternate sections of land surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the school fund, had been pursued and all necessary precedent acts had been performed so as to bring all such lands lying in the said Shackelford county, State of Texas, and especially the said sections of land mentioned and described by complainant in its said bill and which were then and there alternate sections of land set apart for the benefit of the common schools, into market for sale.

2. Defendant admits that it is true, as alleged by complain-
30 ant in the second paragraph of its said bill, that the said sections of land involved in this suit and mentioned and described in plaintiff's said bill had been previous to the year 1882 surveyed by virtue of valid land certificates issued by the State of Texas to the East Texas Railroad Company, a railroad corporation, by and for said railroad company.

3. Defendant admits that it is true, as alleged by plaintiff in the third paragraph of its said bill, that previous to the beginning of the year A. D. 1882 all the precedent acts were performed as required by said acts of the Legislature of the State of Texas; that previous to the beginning of the year 1882 the surveyor of said Shackelford county had received the notice provided for in section four of said act, approved April 6, 1881, and that, such notice being given him, the said surveyor was thereafter authorized to receive applications for the purchase of said sections of lands; and defendant admits that the said sections of land referred to and described in complainant's said bill and which are claimed by complainant and for which this suit is brought are alternate sections of land surveyed by the East Texas Railroad Company, and that they had been set apart by the laws of the State of Texas for the benefit of the common
31 schools, and that the county surveyor of said Shackelford county had reviewed and appraised said lands and all alternate sections in said county, set apart for the benefit of the common schools, under oath, and made return of the same to the county commissioners' court of said Shackelford county, which court had approved the same, and that said lands *are* not bordering on or having fresh water on them were appraised at one dollar per acre, and that said lands were unimproved prior to April 6, 1881, and that as soon as said appraisement was completed the said county commissioners' court prepared such tabulated reports thereof as the law required, and that one copy of such report was filed in the office of the county surveyor of Shackelford county, and one copy thereof was forwarded to and filed in each

of the offices of the commissioner of the general land office and treasurer of the State of Texas, and that they remain in all of said offices as archives, and that said commissioner of the general land office, upon the receipt of such report, approved the same and notified the surveyor of said Shackelford county of that fact, and
32 that all these acts and things were done before the applications to purchase these said lands by Malinda Fisher and F. B. Jacobs were made; and defendant further says that all of said acts and things, as set forth in said third paragraph of complainant's said bill and as admitted by defendant in this paragraph of this answer, were so done and performed before the first day of January, A. D. 1882, and before the applications to purchase said lands by Maggie L. Rhomberg and Frank Robinson, through whom defendant claims title, were made.

4. Defendant admits that it is true, as alleged by complainant in the fourth paragraph of its said bill, that said sections of land as mentioned and described in said bill had been under said laws classed as land suitable only for grazing purposes, and that said law required such land to be sold in quantities to suit the purchaser, but provided that no purchaser be permitted to purchase less than one hundred and sixty acres nor more than three sections of six hundred and forty acres each within five miles of the geographical center of any county or upon any water front, nor more than
33 seven sections at any other place, and that none of the sections sued for in this suit and mentioned and described in complainant's said bill were situated within five miles of the geographical center of said Shackelford county, and that none of them are on any water front.

5. Defendant admits that section six of said amendatory act of April 6, 1881, contained the conditions and provisions as set forth by complainant in the fifth paragraph of its said bill.

6. Defendant admits that section seven of said amendatory act of April 6, 1881, contained the conditions and provisions as set forth by complainant in the sixth paragraph of its said bill.

7. Defendant admits that section eight of said amendatory act of April 6, 1881, contained the conditions and provisions as set forth by complainant in the seventh paragraph of its said bill.

8. Defendant admits that section nine of the said original act approved July 8, 1879, still in force, contains the conditions and provisions as set forth by complainant in the eighth paragraph of its said bill.

34 9. Defendant admits that section ten of said original act approved July 8, 1879, contained the conditions and provisions as set forth by complainant in the ninth paragraph of its said bill.

10. Defendant admits that section eleven of said original act approved July 8, 1879, contained the conditions and provisions as substantially set forth by complainant in the tenth paragraph of its said bill.

11. Defendant admits that section fifteen of said original act ap-

proved July 8, 1879, contained the conditions and provisions set forth by complainant in the eleventh paragraph of its said bill.

12. Defendant admits that the eleven sections of land as mentioned and described in the plaintiff's said bill and involved in this suit, belonging to the common-school fund and situated in Shackelford county, are known as surveys numbered respectively 46, 120, 122, 116, 62, 64, 66, 76, 162, 68, and 96, and that said surveys were made in the order named by virtue of the following-numbered land certificates issued by the State of Texas to the East Texas Railroad Company, to wit, 158, 255, 256, 253, 166,
35 167, 168, 173, 21, 363, 169, and 200, and that these surveys are otherwise called sections, and that each of them contains six hundred and forty acres, as alleged and set forth in the twelfth paragraph of the complainant's said bill.

13. Defendant admits that all of said sections were properly classed under the law as land suitable only for grazing purposes, and that none of said lands were ever chiefly valuable or valuable at all for timber, as alleged and set forth in the thirteenth paragraph of complainant's said bill.

14. Defendant admits that it is true, as alleged and set forth in the fourteenth paragraph of complainant's said bill, that the field-notes of all of said sections of land were on file in the general land office of the State of Texas previous to and ever after the first day of January, A. D. 1882.

15. And defendant denies that one J. A. Rhomberg at any time conceived the purpose of acquiring more of the public school lands of the State of Texas than the law allowed him to acquire by purchase directly from the State, as is alleged and charged in the fifteenth paragraph of its said bill; and defendant denies that
36 said J. A. Rhomberg conceived the purpose to evade the provisions of the aforesaid law with regard to purchases being made in the real name of the applicant, and denies that said J. A. Rhomberg conceived the purpose to fraudulently avoid and disregard the provisions of said laws "that no person shall renew his file nor file on the same land more than once in twelve months, nor shall any person refile or renew his file in the name of any other person," as is alleged by plaintiff in said fifteenth paragraph of its said bill; and defendant denies that said J. A. Rhomberg, at different periods during the year 1882, made applications in the names of different persons, pretending to act as their agent or by their authority, to the county surveyor of said Shackelford county for the purchase of said sections of land, as set forth in said fifteenth paragraph of complainant's bill, but defendant says that all the applications for the purchase of said land, mentioned and referred to in said fifteenth paragraph of complainant's said bill, were made by persons intending to become the actual purchaser- thereof, and that such persons were represented in their said applications by
37 said J. A. Rhomberg as their duly constituted and authorized agent, and that neither said applicants nor their said agent were actuated or moved by any purpose or intent to evade the laws regulating the sales of such land, or to fraudulently avoid or disre-

gard the provisions of said laws requiring such applications for the purchase of such lands to be made in the real name of the person intending to be the actual purchaser thereof, or to fraudulently avoid or disregard the provisions of said laws to the effect that no person shall renew his file nor file on the same land more than once in twelve months, nor refile or renew his file in the name of any other person or with any intent or purpose to fraudulently or otherwise avoid or disregard any of the other provisions or any provision of said laws regulating the purchase of said lands.

Further answering said paragraph fifteen of complainant's said bill, defendant admits that said J. A. Rhomberg did, at different periods during the year 1882, act as the agent of certain persons in making applications for the purchase of each of said sections of land to the surveyor of said Shackelford county, and that he paid
38 said surveyor the fee required by law for the applicant to pay the surveyor on filing his application, and that the surveyor thereupon recorded such application and endorsed the same and signed his name thereto and delivered the same to the said J. A. Rhomberg, in all respects as the law governing the case and as recited in complainant's said bill requires; but defendant says that in making said applications and in all the acts and things done in relation thereto by the said J. A. Rhomberg he, the said J. A. Rhomberg, acted only as the agent of the said applicants and for their benefit, and not in his own behalf or for his own benefit.

And defendant denies that said purchasers or any of them were pretended purchasers, or that said purchasers or any of them were made for the use and benefit of said J. A. Rhomberg, as is alleged by plaintiff in said paragraph fifteen of said bill, but defendant says that said applications and each and all of them were made by real persons, and that each and all of said applications were made in good faith.

And defendant admits that neither said J. A. Rhomberg nor any of said purchasers of any of said lands at any time during
39 the year 1882 or at any time before the 1st March, 1883, made payment to the treasurer of the State of Texas of the first payment that the law required to be made in such cases, nor did said J. A. Rhomberg or any of said purchasers or any person for them cause to be procured the certificate of the commissioner of the general land office of the State of Texas, nor did he or they or any of them present such certificate of the commissioner of the general land office to the county surveyor of said Shackelford county within ninety days after the date of recording said applications, but defendant says that he has not now and never at any time interest whatever, either individually or in connection with any other person, in any of the applications to purchase said sections of land made during the year 1882 and mentioned and referred to in paragraph fifteen of complainant's said bill, except only the applications for the purchase of said sections of land made by Frank Robinson and Maggie L. Rhomberg on November 25, 1882, under and by virtue of which said sections of land have been patented by the State of Texas to this defendant as the assignee of said Frank

Robinson and of said Maggie L. Rhomberg, as will here-
40 inafter be fully set forth and shown by this defendant; and defendant further says that he does not now know any of the persons who made the applications for the purchase of said lands or any of them prior to the purchases thereof by said Frank Robinson and Maggie L. Rhomberg, and that he had no information, knowledge, or notice of the existence of any such applications for the purchase of said lands or any of them before or at the time he acquired title thereto, as will hereinafter fully be shown and set forth, nor did he ever have or acquire any information, knowledge, or notice of the existence of such applications or any of them, or any information, knowledge, or notice of such applications or any of them ever having been made until after the filing of this bill, defendant's first information or knowledge of the same being given by complainant's said bill in this suit; and defendant further says that he does not now know nor has he ever known the reason why said applicants for the purchase of said lands preceding the said Frank Robinson and Maggie L. Rhomberg did not make the first payment to the treasurer of the State of Texas and procure the certifi-
41 cate of the *the* commissioner of the general land office of such payment and forward such certificate to the surveyor of said Shackelford county within ninety days from the date of recording and filing their respective applications, but defendant is informed and believes and upon such information and belief alleges that said persons so applying for the purchase of said lands prior to the applications of the said Frank Robinson and Maggie L. Rhomberg, made on the 25 November, 1882, for the purchase of said lands, neglected and failed to make the first payment on their said purchases to the State treasurer, and neglected and failed to do and perform all the other acts and things as provided and required by the said laws regulating the purchase of such lands, and thereby abandoned and forfeited their said purchases and all rights and privileges in said lands; but defendant says that the said applications by the said Frank Robinson and Maggie L. Rhomberg for the purchase of said sections of land were made on November 25, 1882, to the surveyor of said Shackelford county, who then and there
42 received said applications and recorded the same and endorsed the record thereof upon said applications, as the law required, and signed his name thereto, and then delivered the same to the said Frank Robinson and Maggie L. Rhomberg, through their said agent, the said J. A. Rhomberg, who was then and there acting for them under due authority; and defendant further says that thereafter, within ninety days from the filing of said applications as aforesaid, to wit, on the 18th day of January, A. D. 1883, the said applicants, Frank Robinson and Maggie L. Rhomberg, by their said agent, J. A. Rhomberg, presented said applications, duly recorded and endorsed by the surveyor of said Shackelford county, as the law required, to the treasurer of the State of Texas, and then and there tendered to the said treasurer of the State of Texas the amount of money required by said laws to be paid as the first payment on said lands, to wit, the sum of thirty-

two dollars on each section of said land, the same being one-twentieth of the assessed value thereof as aforesaid, but the said treasurer of the State of Texas did wrongfully and unlawfully refuse to receive said payments so tendered, and did thereby prevent the
43 said Frank Robinson and Maggie L. Rhomberg, purchasers as aforesaid, from doing and performing the other acts and things pertaining to the purchase of said lands as provided in the said laws regulating such purchase, and defendant says that such tender of payment was made in good faith and before the ninety days allowed by law to said purchasers had expired, and that said purchasers did not abandon or forfeit their rights as such purchasers, but did persistently and constantly claim said lands, and did claim the right to make payments thereon, and did make tender thereof to said treasurer until their said tenders were finally accepted and their said purchases made complete, as will be more fully shown hereafter.

16. Defendant admits that on February 28, 1882, applications were made to the surveyor of Shackelford county in the name of F. Becker for the purchase of sections numbered 62, 66, 96, 76, 68, and 64, and on the same date applications in the name of F. L. Rhomberg for sections numbered 120 and 122, and on same date applications in name of Conrad Becker for said sections num-
44 bered 116, 162, and 46; that on May 29, 1882, applications were made in the name of J. M. Beechem for said sections numbered 64, 68, 76, 66, 62, 96, and 116, and on May 30, 1882, in name of W. B. Thompson for said sections numbered 122, 162, 120, and 46; that on August 28, 1882, applications were made in name of Margaretta Rhomberg for said sections numbered 76, 116, 68, 96, 64, and 62, and on the same day in name of F. M. Robinson for said sections numbered 122, 162, 120, and 46, and that on November 25, 1882, applications in the name of Frank Robinson were made for the purchase of said sections numbered 162, 122, 120, and 46, and on the same day, November 25, 1882, applications in the name of Maggie L. Rhomberg were made for sections numbered 66, 68, 76, 62, 96, 64, and 116, as alleged by plaintiff in the sixteenth paragraph of its said bill, but defendant denies that any of said applications were made for the use or benefit of said J. A. Rhomberg.

17. Defendant denies that the persons whose names were used in making said applications or any of them were not in every instance "the person intending to be the actual purchaser of said lands" or any of them, and defendant denies that the said J. A. Rhom-
45 berg was "the person intending to be the actual purchaser of each and every section of said lands or of any section thereof," as is alleged by plaintiff in the seventeenth paragraph of its said bill; and defendant specially denies that the name of Frank Robinson and Margaret L. Rhomberg were used in making their said applications by said J. A. Rhomberg, and denies that said applications were made by the said Frank Robinson and Maggie L. Rhomberg without intending to be the actual purchasers of the said lands they severally applied for, and denies that said J. A. Rhomberg was the person intending to be the actual purchaser of each and every sec-

tion or of any section of the lands so applied for by said Frank Robinson and Maggie L. Rhomberg as aforesaid.

18. Defendant denies that said J. A. Rhomberg caused each and every one of the said applications to be made as alleged in the eighteenth paragraph of complainant's said bill, but says that J. A. Rhomberg acted only as the agent of said parties in making said applications; and, further answering the allegation in said eighteenth paragraph of complainant's said bill, defendant says that
46 he is not informed and does not know whether the charge be true that said J. A. Rhomberg conducted all the correspondence and gave all the instructions with regard to said applications in his own name, and that in his correspondence with the surveyor he openly claimed that the lands so applied for were applied for by him and for his own benefit and would belong to him and be subject to his control and disposition, because defendant has never seen said correspondence or any of it, if any such exists, and that he had no information or knowledge of any such correspondence until so informed by complainant's said bill after the same was filed in this suit, and that defendant had no information, knowledge, or notice of any such correspondence or of any of the matters alleged to be contained in the said correspondence when defendant purchased said lands and became the owner thereof; and defendant further says that he has applied to the surveyor of said Shackelford county for copies of all letters written by J. A. Rhomberg and by persons purporting to be his agents and representatives relating to these
47 and other lands in Shackelford county, and defendant was notified by said surveyor that no such letters were on file in his office; and defendant says that if such letters were written by said J. A. Rhomberg to the said surveyor of Shackelford county, as is alleged by plaintiff, then such letters would be records and archives of said surveyor's office, and the same would be found in such office, unless they have been purloined and removed therefrom by the complainant or by some person in the interest of complainant; and defendant further says that because no such letters as are described by complainant in said paragraph eighteen of its said bill are on file in the surveyor's office of Shackelford county, and the same are not produced by complainant nor complainant's possession of the same explained nor copies of the same filed with complainant's said bill, defendant believes that such pretended letters are spurious, and he so charges; and defendant admits that all fees of officers and the purchase-money of said lands were paid and tendered
48 when tender was made by said J. A. Rhomberg; but defendant says that said payments of fees of officers and purchase-money and such tenders thereof were made by said J. A. Rhomberg as the agent of the person in whose name the same was made, and especially that the fees of officers and payments and tenders of payments of purchase-money made by said J. A. Rhomberg in behalf of said Frank Robinson and Maggie L. Rhomberg were by him made as the agent of the said Frank Robinson and Maggie L. Rhomberg and for their use and benefit.

19. Defendant, answering paragraph nineteen of complainant's

said bill, denies that said J. A. Rhomberg made or caused to be made all of said applications or any of the said applications for his own personal benefit, but says that all that was done by said J. A. Rhomberg was as agent of the parties in whose names such files were made.

And, further answering the allegations in said paragraph nineteen, defendant says that he has no information or knowledge of the facts and does not know whether it be true, as alleged by
49 complainant, that said J. A. Rhomberg did purpose- and in more than one instance avowedly let the ninety days within which he was required to make the first payment for said lands and return the certificate of the commissioner of the general land office to the surveyor of Shackelford county expire without performing either of said acts, in so far as said allegations apply to the said applicants and purchasers whose applications preceded the applications of the said Frank Robinson and Maggie L. Rhomberg, but as to the applications of the said Frank Robinson and Maggie L. Rhomberg defendant denies that said J. A. Rhomberg purposely or avowedly let the ninety days within which he was required to make the first payment for said lands and return the certificate of the commissioner of the general land office to the surveyor of Shackelford county expire without performing either of the said acts, but defendant says that within the ninety days after the making of said applications on November 25, 1882, to wit, on January 18, 1883, said J. A. Rhomberg, as the agent of the said Frank Robinson and
50 Maggie L. Rhomberg, did make tender of the first payment on all of said lands to the treasurer of the State of Texas, who then and there unlawfully and wrongfully refused to receive the same and prevent the due performance of other acts required by law, all of which will be more fully set out hereinafter in this answer.

And defendant denies that said J. A. Rhomberg, by permitting the ninety days allowed by law for making the first payment to expire as to the applications aforesaid made precedent to the applications of Frank Robinson and Maggie L. Rhomberg or as to any applications, intended thereby fraudulently to prevent other people from purchasing said lands during said ninety days and to make applications in the names of other persons about the time of the expiration of the ninety days, and denies that he intended said purchases or any of them for his own benefit and not for the benefit of the persons in whose names the applications were made; and defendant denies that said J. A. Rhomberg, from February 28,
51 1882, to the end of the year 1882, during all of said time or in any part of said time, by the use of such artifice or fraud as is set forth and charged by plaintiff in said paragraph nineteen of said bill and which allegations and charges have been specially denied by defendant in the preceding portions of this paragraph of his answer, did keep other people from purchasing said land and deprive the State of its revenue therefrom; and defendant says that the records show that no other person applied for the purchase of said lands during any part of the year 1882, and especially shows

that plaintiff made no such application; and defendant further says that whatever may have been the acts and purposes of the said J. A. Rhomberg during the year 1882 referred to, the same could not injuriously effect and did not effect any right of plaintiff in said lands, he having no right then therein, and has acquired no right arising during that period.

And defendant admits that said J. A. Rhomberg did not purchase or pay for any of said lands for himself. Defendants also
52 admits that none of the said applicants for said lands, whose applications preceded the applications of Frank Robinson and Maggie L. Rhomberg, did any act toward purchasing and paying for said lands except the filing of their several applications, and that all of such precedent applicants permitted their applications to be forfeited; and defendant denies that any of said applicants were pretended applicants; and defendant denies that said applicants, Frank Robinson and Maggie L. Rhomberg, failed or neglected to perform any of the acts required of them by the law, only in so far as they were prevented from performing the same by the acts of the State treasurer and other officers, as herein fully set forth.

20. Defendant, answering to the allegations and charges contained in the twentieth paragraph of complainant's said bill, says that he has no information or knowledge of the truth of the charge that said J. A. Rhomberg, while in the act of making said applications to purchase and conducting the correspondence thereabout with the surveyor of said Shackelford county, not only claimed and
53 disclosed that said lands were being purchased for his benefit and would belong to him, but disclosed his purpose and intention to be to let his application be forfeited, with the view of making other applications for the same lands in other names, which he did, but also disclosed that his purpose by the delay was to defraud the State from the collection of its proper taxes on said land, and at the same time, for the purpose of unduly influencing said surveyor in his behalf, forwarded to him double the sum of money required for each application, and held out to him hopes of further profit by proposing to make him, the surveyor, his agent for the sale of said lands, in so far as said allegations and charges apply to said applications for the purchase of said lands preceding the applications made therefor by Frank Robinson and Maggie L. Rhomberg, but defendant does not believe that said allegations and charges are true, and upon such belief denies that the same are true. Defendant, further answering, denies said allegations and charges as con-
54 tained in said paragraph twenty, so far as the same refer to the said applications of the said Frank Robinson and Maggie L. Rhomberg for the purchase of said lands made on November 25, 1882; and, further answering, defendant says that if all the allegations and charges aforesaid set forth in said paragraph twenty be true, the same did not wrong or impede the plaintiff or any person through whom plaintiff claims, and that neither the plaintiff nor any person through whom plaintiff claims at the time of the occurrence of the acts, matters, and things as alleged in said para-

graph twenty had any claim, title, or interest, legal or equitable, of any character whatsoever, in the lands involved in this suit, and that the State of Texas, and not plaintiff, could bring in question the effect of such acts; and, further answering, defendant says that in the years 1882 and 1883 one H. C. Jacobs was county surveyor of said Shackelford county, and that one J. L. Fisher was county judge of said county; that H. C. Jacobs and J. L. Fisher were partners as real-estate agents and transacted business under the
55 name and style of Jacobs and Fisher, and that one F. B. Jacobs, who, defendant is informed and believes and so charges, was a brother or near relative of said H. C. Jacobs, was during the years 1882 and 1888 postmaster at Albany, the county seat of said Shackelford county, and is the same F. B. Jacobs through whom plaintiff claims a portion of said lands, and that during this time one J. A. or John A. Fisher was a deputy surveyor of said Shackelford county, and Malinda Fisher, the party through whom plaintiff claims the remainder of said lands, was the wife of said J. A. or John A. Fisher, deputy surveyor; and defendant further says that he is informed and believes and so charges that the said H. C. Jacobs, surveyor; F. B. Jacobs, postmaster; J. L. Fisher, county judge; J. A. or John A. Fisher, deputy surveyor, and other persons unknown to defendant had formed a confederation, combination, and conspiracy to levy a contribution on all purchasers of school lands in Shackelford county, and to control the sale of all school lands in Shackelford county for their own benefit and for their own personal gain.

And defendant says that he is informed and believes
56 and charges the fact to so be that the said firm of Jacobs & Fisher wrote letters to said J. A. Rhomberg and solicited his business and that of the persons whom he, said J. A. Rhomberg, represented, promising to sell such lands as he could control at prices much in advance of the prices paid to the State, and that the said Jacobs & Fisher, upon their own request and solicitation, did offer to make files of applications and do other acts for persons represented by said J. A. Rhomberg in reference to the purchase of school lands, and promised special favors and attentions to all who should employ them, and for these services they proposed to charge fees and commissions outside and in addition to the fees allowed by law to the surveyor, as is shown by their many letters, and, in this way and by other means, extorted money from the purchasers of school lands in Shackelford county; and, further answering, defendant says that on November 27, 1882, the said Jacobs & Fisher wrote to the said J. A. Rhomberg that applications had been recorded by the surveyor and enclosing same to said J. A. Rhomberg,
57 the applications referred to being the said applications of Frank Robinson and Maggie L. Rhomberg for the lands in controversy in this suit, and, among other things, stated that "we (meaning said Jacobs & Fisher) would like to attend to your land business here. Think we could sell this land soon at $1.50 per acre."

21. Defendant, answering to the allegations contained in paragraph twenty-one of plaintiff's said bill of complaint, admits that

ninety days allowed the applicants for the purchase of said lands made on August 28, 1882, and which were recorded by the surveyor of Shackelford county on August 28, 1882, in the proper record book, as required by law, had not expired on November 25, 1882; but defendant says that the said applicants, F. M. Robinson and Margaretta Rhomberg, who had made applications for all of said lands, except said sections No. 66, abandoned and cancelled their said applications before the applications therefor were made by said Frank Robinson and Maggie L. Rhomberg on November 25,
58 1882; and defendant denies that it is true that said lands were not subject to be sold to any other purchaser than said F. M. Robinson and Margaretta Rhomberg on November 25, 1882, or the day following, because defendant says that such applications were abandoned and cancelled and such lands were open to resale.

22. Defendant, answering the allegations and charges contained in the twenty-second paragraph of complainant's said bill, admits that applications for the purchase of all of said sections, except said section No. 66, were made by F. M. Robinson and Margaretta Rhomberg on August 28, 1882, and that such applications to the surveyor of Shackelford county were recorded by said surveyor on the same day, and that the ninety days allowed by law to make the first payments to the treasurer for said lands and return to the surveyor of said Shackelford county the certificate of the commissioner of the general land office had not expired on November 25, 1882, when said Frank Robinson and Maggie L. Rhomberg made appli-
59 cation to purchase all of the lands in controversy, including said section No. 66, which was not included in the said applications made August 28, 1882, and defendant admits that the said applications of the said Frank Robinson and Maggie L. Rhomberg were made to purchase the same, including said section No. 66, to the said surveyor of Shackelford county, and the same were by him received and duly recorded on November 25, 1882; but defendant denies that when the applications of the said Frank Robinson and Maggie L. Rhomberg were made to purchase the same land, including said section No. 66, to the surveyor of Shackelford county and recorded as aforesaid that said lands or any of them were entered on the books of the said surveyor's office as "sold," and denies that the said surveyor was then forbidden by law from entering another application to purchase any of said lands; and defendant says that said section No. 66 was not included in the said applications made on August 28, 1882, and that said F. M. Robinson and Mar-
60 garetta Rhomberg had abandoned, withdrawn, and cancelled their said applications for the purchase of said lands other than said section No. 66 before the said applications made by the said Frank Robinson and Maggie L. Rhomberg therefor were made for said lands on November 25, 1882, and that all of said lands were subject to sale, and that said surveyor had no authority to mark the same on his books as sold until the first payment was made to the treasurer and the certificate of the commissioner of the general land office procured and returned to the surveyor as the law provided.

And, further, defendant says that even if the ninety days allowed the said F. M. Robinson and Margaretta Rhomberg to make the first payment to the treasurer and procure the certificate of the commissioner of the general land office and return the same to the surveyor of Shackelford county had not expired on November 25, 1882, and if their said applications had not been abandoned, withdrawn, or forfeited, yet plaintiff could not avail himself
61 of this fact, because only the said F. M. Robinson and Margaretta Rhomberg or the State of Texas, or some one having a then existing equity, could be heard to contest the right of said Frank Robinson and Maggie L. Rhomberg to acquire said lands by their applications made on November 25, 1882, and plaintiff and those through whom plaintiff claims at that time had made no application for said land, and made no application until long after the said applications of Frank Robinson and Maggie L. Rhomberg had been duly made and recorded in the office of the surveyor of Shackelford county, and until after a valid, equitable title to said lands had vested in the said Frank Robinson and Maggie L. Rhomberg, through whom this defendant holds the title to said lands.

23. Defendant admits that applications were made to the surveyor of Shackelford county for the purchase of each and all of said lands in the names of said Margaretta Rhomberg and F. M. Robinson, except for section No. 66, and that said applications
62 were duly recorded by said surveyor in the proper record books of his office on August 28, 1882, as is alleged by plaintiff in the twenty-third paragraph of its said bill, but defendant denies that Frank Robinson made an application for any of said lands on August 28, 1882, or at any time except on November 25, 1882; and defendant further admits that on November 25, 1882, the said applicants to purchase had not failed to make their first payment of one-twentieth of the appraised value of the land embraced in their said applications to the treasurer of the State of Texas within ninety days from the date of the record of their applications, and that no one of them has failed, on November 25, 1882, to present to the surveyor of Shackelford county or his deputy, within ninety days from the record of their applications to purchase, made as aforesaid, the certificate of the commissioner of the general land office of the State of Texas, and that on November 25, 1882, the surveyor of Shackelford county had not been notified of the forfeiture of the applications to purchase said sections of land
63 made and recorded as aforesaid on August 28, 1882, and that on November 25, 1882, and there had been no official forfeiture of said applications, but defendant denies the allegations in said paragraph twenty-three to the effect that said sections were not for sale under the law on November 25, 1882, and that the surveyor of Shackelford county was not on said last-mentioned date authorized to receive applications for the purchase of the same or any of said sections, or any part thereof, and says that the applications of the said F. M. Robinson and Margaretta Rhomberg for the purchase of said lands, made and recorded, as aforesaid, on August 28, 1882, had

been abandoned, cancelled, and withdrawn by the said F. M. Robinson and Margaretta Rhomberg before the making and recording of the applications of said Frank Robinson and Maggie L. Rhomberg, made on November 25, 1882, and that said surveyor was authorized to receive and record such applications; and defendant further says that the act of sale of the school lands, such as are involved in this suit, by the State of Texas,
64 under the said acts of July 8, 1879, and April 6, 1881, was an executory contract between the State of Texas and the applicants, and that an application made by another person to the surveyor for the purchase of lands already applied for, before the first payment to the State treasurer had been made and before the certificate of the commissioner of the general land office had been returned to the surveyor, and before ninety days from the date of the first application had expired, would not be void under the said acts, and could only be avoided, set aside, or defeated by the applicant having the prior application and the prior equitable right, but not by a third person having no equity or right vested in him in the land; and defendant says that if it were true that the applications made by the said Frank Robinson and Maggie L. Rhomberg on November 25, 1882, were made before the ninety days allowed by law to said F. M. Robinson and Margaretta Rhomberg, who had applied for the same lands, except said section No. 66, on
65 August 28, 1882, had expired, and if such applications were received and recorded by said surveyor, as they were received and recorded, then only the said F. M. Robinson and Margaretta Rhomberg, or some one claiming under them, could set aside, avoid, and defeat the applications of said Frank Robinson and Maggie L. Rhomberg made on November 25, 1882, as aforesaid, and plaintiff and those through whom plaintiff claims said lands, having made no application for the purchase of said lands prior to said November 25, 1882, and having made no application for the purchase of said lands until long after said last-named date, and having no right or claim by virtue of the said applications of the said F. M. Robinson and Margaretta Rhomberg made on August 26, 1882, have no rights or equities against the said Frank Robinson and Maggie L. Rhomberg or against this defendant as their assignee.

24. And defendant admits that said Margaretta Rhomberg and F. M. Robinson did not nor did either of them nor did any person for them or either of them make the first or any payment to
66 the treasurer of the State of Texas for said lands within ninety days from August 28, 1882, and that they did not nor did any of them or any person for them or any of them within said time present to said surveyor or his deputy the certificate of the commissioner of the general land office, as provided in said above-recited acts and as alleged by plaintiff in the twenty-fourth paragraph of said bill, but defendant says that said Margaretta Rhomberg and F. M. Robinson abandoned their said applications before November 25, 1882, and declined to proceed therewith and claimed no further interest therein. Wherefore defendant denies that said lands were not for sale again until the expiration of the ninety days

from August 28, 1882, because he says that they were again for sale and subject to sale on November 25, 1882; and defendant denies that said surveyor was not authorized to again receive applications for the purchase of said lands until ninety days after August 28,
1882, because he says that the same were subject to sale and
67 the said surveyor authorized to receive applications for the
purchase thereof on and after November 25, 1882, as aforesaid, and that the applications for the purchase thereof made by the said Frank Robinson and Maggie L. Rhomberg to said surveyor on November 25, 1882, were authorized by law; and defendant admits that no application was made subsequently to November 25, 1882, until January, 1883, when applications were made by plaintiff's assignors, as alleged, but defendant says that such applications were unauthorized by law and were and are void, as will be more fully shown in other portions of this answer; and defendant denies that said sections of land were not subject to sale under and in pursuance to said acts of the Legislature of Texas until the expiration of ninety days from August 28, 1882, because they were subject to be sold as aforesaid on November 25, 1882; and defendant admits that subsequent to the expiration of ninety days after August
28, 1882, neither the defendant nor any person under
68 whom he holds has made any application to the surveyor of
Shackelford county to purchase said sections of land or any part of them, but the defendant says that the said Frank Robinson and Maggie L. Rhomberg, under whom defendant claims, did make a valid and binding application for the purchase of said lands on November 25, 1882, and that defendant and his assignors have duly purchased said lands and acquired the full title thereto in the manner provided by said acts of the Legislature; and defendant denies that the plaintiff's assignors have, since the expiration of the ninety days from the 28 August, 1882, or at any other time, purchased said lands under and in pursuance of the law, and denies that the same was open to sale or subject to purchase by plaintiff's said assignors at the time when their said pretended applications were made; and, further, defendant says that even if it were true,
as alleged by plaintiff, that said Frank Robinson and Maggie
69 L. Rhomberg made applications to said surveyor for the
purchase of said lands before the expiration of ninety days from the date of the last preceding applications made by F. M. Robinson and Margaretta Rhomberg for the same lands, except said section No. 66, and that such applications were received and recorded by the said surveyor, still defendant says that such applications would not be void and would only be voidable at the suit of the said F. M. Robinson and Margaretta Rhomberg, and only voidable as to them upon the payment of the first installment of the appraised value to the treasurer and the performance of the other acts and things required by said statutes regulating such sales within ninety days from the date of their said applications, as provided by law, and that said applicants, F. M. Robinson and Margaretta Rhomberg, have asserted and are asserting no claim to said lands and have waived, abandoned, and surrendered all claim thereto;

and defendant says that neither plaintiff nor his assignors
70 nor any one of them had made application for said lands or for any part thereof on or before November 25, 1882, and that neither plaintiff nor his assignors nor any one of them had any equitable interest or interest of any character in said lands or in any of them on November 25, 1882, when the assignors of defendant purchased the same, as set out in this answer, and plaintiff cannot bring in question the right of defendant's assignors to purchase said lands on November 25, 1882.

25. And defendant, in answer to the allegations contained in the twenty-fifth paragraph of complainant's said bill, says that he has no knowledge or information of the transactions of the said J. A. Rhomberg during the year 1882 and does not know whether it be true that said J. A. Rhomberg during said year made applications for the purchase of other and different sections of school lands for sale under the said laws, lying in said Shackelford county and in other counties in the State of Texas, in the names of the same persons who are mentioned in complainant's said bill as pur-
71 chasers of the lands in controversy and in the names of various other persons, amounting to hundreds of sections of land, and that said J. A. Rhomberg made all payments of money that were paid on account of such lands and was the real purchaser thereof, but defendant believes and so alleges that in all purchases of such lands by said J. A. Rhomberg or in which he was interested he acted wholly as the agent of other persons; that he used the money of such persons whose names appear as the applicants for the purchase of such lands, furnished him by such persons and for such purpose; and defendant does not believe and so alleges that he never acquired or attempted to acquire one section or any quantity of school land in his own name or in the name of any other person for his own benefit; and defendant further says that he is informed and believes and so alleges that said J. A. Rhomberg does not own or claim a single section of school land in the State of Texas purchased under said acts of July 8, 1879, and April 6, 1881, and that he has never claimed any of such lands.

72 26. And defendant, answering paragraph twenty-six of said bill, denies that Frank Robinson and Maggie L. Rhomberg or either of them, whose applications for the purchase of said sections of land were made on November 25, 1882, were pretended purchasers or that their names were used by the said J. A. Rhomberg for his own benefit, as alleged by complainant in its said bill, but says that said applicants were real persons, competent and authorized to acquire said lands by purchase under said laws, and that their said applications were made in good faith, the said applicants intending to be the actual purchasers thereof, and that said J. A. Rhomberg acted only as their agent and by their request and authority in filing their applications and in performing the other acts and things in their behalf necessary to be done in the purchase of said lands under the provisions of the said laws of the State of Texas; and defendant denies that said Maggie L. Rhomberg
73 and said Frank Robinson or either of them pretended to

convey the said lands, the said Maggie L. Rhomberg to John H. Klein and the said Frank Robinson to R. S. Hoglen, and defendant denies that the consideration mentioned in each of said deeds of one hundred and thirty-two dollars for each section of said lands was inadequate, and denies that said lands were pretended to be sold and conveyed; and defendant says that after the said applications for the purchase of said lands, made by said Frank Robinson and Maggie L. Rhomberg, had been presented to the said surveyor of Shackelford county on November 25, 1882, and after the same had been by the said surveyor duly recorded in the book kept by him and required so to be kept for that purpose, the said applications so recorded and endorsed "recorded," and such certificates of record being duly signed by said surveyor, H. C. Jacobs, the same were by said surveyor returned, on November 27, 1882, to the said J. A. Rhomberg, as the agent of the said applicants, and that said applicants were by the said laws allowed ninety days from November 25, 1882, in which to make the first payment on said lands to the State treasurer, procure the certificate of the commissioner of the gen-
74 eral land office, and return the same to the surveyor of Shackelford county; and defendant further says that afterwards, to wit, on January 18, 1883, before the said ninety days allowed had expired, the said applicants, Frank Robinson and Maggie L. Rhomberg, by their said agent, J. A. Rhomberg, did present the said applications, duly recorded and certified by the surveyor of Shackelford county as aforesaid, to the State treasurer of the State of Texas and, in behalf of said applicants, tendered to said State treasurer the sum of thirty-two dollars on each of said sections of land, as required by law; but the said State treasurer then and there wrongfully refused to accept said payments and declined the tender thereof for the reason, as then stated, of previous payments on said lands, meaning thereby that the State treasurer had previously accepted the first payments on said sections of land on the applications of the said F. B. Jacobs and said Malinda Fisher; and defendant further says that the said Frank Robinson and Maggie L. Rhomberg did not nor did either of them surrender or abandon their claims to said lands under their said applications for the purchase of the same, but continued by all the means in their power to assert and enforce the same, and in furtherance of
75 the prosecution of their said lawful claims to said lands did again, on February 23, 1884, by their said agent, make due tender of the said payment on said lands, to wit, the sum of thirty-two dollars on each section thereof, to the said State treasurer, who then and there again unlawfully refused to receive the same, stating his reasons as before—that the said lands had been previously paid on; and again, on March 1, 1884, the said applicants, Frank Robinson and Maggie L. Rhomberg, by their said agent, did make due tender to said State treasurer of the full amount of principal and interest then due on all of said sections of land under their said purchases made November 25, 1882, the sum so tendered being $669.47 on each of said sections, but the said tender was again wrongfully refused by said State treasurer for the like reason as be-

fore—that said sections had been previously paid on; and again, on February 17, 1885, the said applicants, Frank Robinson and Maggie L. Rhomberg, by their said agent, did again make tender of the first one-twentieth of the assessed value of said land, to wit, the sum of thirty-two dollars on each section, and the said State treasurer, having investigated the rights of said applicants and
76 being advised of the facts, did recognize the said applications as valid and superior to the applications of the said F. B. Jacobs and Malinda Fisher, and did accept the said payments tendered by the said Frank Robinson and Maggie L. Rhomberg on said sections of land, and did make the entries in the records of his office of the sale of the said lands to said Frank Robinson and Maggie L. Rhomberg, as the law requires, and did issue his receipts for said payments, and did forward to the general land office the said applications and his receipts for said payments; and thereafter, on February 25, 1885, the said commissioner of the general land office of the State of Texas duly filed said applications and receipts in his office, made the proper entries in the books of his office, as required by law, and delivered to the said Frank Robinson and Maggie L. Rhomberg certificates of purchase for said lands in lieu of said applications and receipts, as required by law, and the purchase thereof became complete.

And defendant further says that thereafter, on February 28, 1885, the said Maggie L. Rhomberg, joined by Jacob Rhomberg, her husband, for the consideration of the sum of one hundred
77 and thirty-two dollars for each section of land, and making a deed for each separate section, did sell and convey said sections numbered 76, 68, 96, 64, 66, 62, and 116, and which were contained in her said applications, to John H. Klein, and on March 5, 1885, said Frank Robinson, for the consideration of one hundred and thirty-two dollars for each section of land, and making a deed for each separate section, did sell and convey said sections numbered 122, 162, 120, and 46, and which were contained in his said applications, to R. S. Hoglen; and defendant says that the considerations paid and recited to be paid in said deeds for said lands were the adequate and reasonable value of said lands at that time, only the sum of thirty-two dollars having been paid on each section of land, the price received being one hundred dollars more than the amount already paid to the State on each section; and defendant denies that said J. A. Rhomberg caused said conveyance to be made to said Klein and Hoglen for his own uses and purposes, or at all for any purpose, and denies that the said J. A. Rhomberg was then interested in said lands or that he has ever been interested in said
78 sections of land or in any of them, and denies that he had out of his own funds paid all the expenses or any of the expenses attending the purchase of the same, and denies that there was anything to be reimbursed to the said J. A. Rhomberg by the said Frank Robinson and Maggie L. Rhomberg or either of them; and defendant denies that said Klein and Hoglen were pretended purchasers of said lands, but says that their said purchases were genuine transactions, and that the same were made by the said

parties thereto honestly and in good faith; and defendant denies that the said Frank Robinson and Maggie L. Rhomberg were pretended purchasers of said lands, but says they were the real and actual purchasers thereof; and defendant denies that it is true, as alleged by complainant in said twenty-sixth paragraph of its said bill, that the consideration of one hundred and thirty-two dollars for each of said sections of said lands then and there pretended to be paid to the said Maggie L. Rhomberg and Frank Robinson by the said Klein and Hoglen was not paid to them, but defendant says that said consideration of one hundred and thirty-two dollars
79 was in fact and really paid as set forth in said deeds; and defendant further denies that it is true, as alleged by plaintiff in said paragraph twenty-six of said bill, that the said consideration of one hundred and thirty-two dollars for each section of said land, if paid by Klein and Hoglen to said Frank Robinson and Maggie L. Rhomberg or either of them, was not paid to them as the owners and real vendors of said land, but only as consideration for allowing said J. A. Rhomberg to use their names as the pretended purchasers of said lands; and defendant says that the consideration of one hundred and thirty-two dollars for each section of said lands, as mentioned in said deeds, was really and in truth paid by said Klein and Hoglen to said Frank Robinson and said Maggie L. Rhomberg, who were then and there the real owners and vendors of said lands, and that the same was not paid as a consideration for allowing the said J. A. Rhomberg to use their names as the purchasers, pretended or otherwise, of said lands; and defend- denies that if such facts existed as are alleged by plaintiff in said paragraph twenty-six of said bill that said Klein and Hoglen had no knowledge or
80 notice thereof, and says that this defendant had no knowledge or notice thereof at the time he purchased said lands, nor did he have any notice of such charges until the complainant's bill was filed in this suit.

27. Defendant, answering the allegations contained in the twenty-seventh paragraph of said bill, denies that the said John H. Klein, on March 13, 1885, or at any other date or time, pretended to sell the lands conveyed to him by said Maggie L. Rhomberg to said R. S. Hoglen, and defendant says that, to wit, on March 13, 1885, the said John H. Klein did actually sell and convey said lands sold and conveyed to him by Maggie L. Rhomberg as aforesaid to said R. S. Hoglen; and defendant denies that the consideration recited in said last-mentioned deed, of four hundred and seventy-five dollars for each section, was pretended or that the same was an inadequate consideration for said lands, and defendant says that the consideration of four hundred and seventy-five dollars for each section of land so sold and conveyed in said deed was the actual consideration paid, and that the same was the full value of said lands at
81 that time, only one payment of thirty-two dollars on each section of land having then been made to the State; and defendant denies that the conveyances of said sections of land by said John H. Klein to said R. S. Hoglen by the deeds as aforesaid, dated March 13, 1885, were made at the instance of or for the use and

benefit of the said J. A. Rhomberg, and denies that said J. A. Rhomberg was the real or beneficial owner thereof, and denies that the consideration actually paid was so paid by or through the agency of said J. A. Rhomberg, and denies that said Hoglen then and there or at any time had notice of such facts; and defendant says that such conveyances of said lands were made by said Klein as the real owner and vendor thereof to the said Hoglen as the real purchaser and vendee thereof, and that the consideration was paid by said Hoglen to said Klein as recited in said deeds and for the use and benefit of said Klein alone, and that thereby the equitable title to said sections of land so conveyed vested in said Hoglen.

28. Defendant, answering the allegations made in the twenty-eighth paragraph of plaintiff's said bill, denies that said
82 R. S. Hoglen, on April 28, 1886, or at any other date or time, pretended to sell to this defendant all of said eleven sections of land for the consideration of six hundred and forty dollars for each section, as expressed in said deed, and says that, in fact and in truth, the said R. S. Hoglen did, to wit, on April 28, 1886, actually and really sell and convey to this defendant said eleven sections of land for the consideration then and there by this defendant paid to said R. S. Hoglen, of six hundred and forty dollars for each and every section of said lands.

And defendant admits that between the dates of the conveyances of said lands made as aforesaid to said Hoglen and said conveyances by him to defendant that said lands had not appreciated in value, and that they were then still worth more than one dollar per acre, and, as defendant verily believed when he purchased the same as aforesaid, worth two dollars per acre, only thirty-two dollars per section on each section having then been paid to the State; and defendant denies that said conveyances by said R. S. Hoglen to this defendant conveying said lands to this defendant as
83 aforesaid were pretended conveyances, and denies that such conveyances were negotiated and brought about by said J. A. Rhomberg, and denies that said J. A. Rhomberg was then and there the real and beneficial owner of said lands or the owner of any part thereof or the owner of any interest therein, and denies that said J. A. Rhomberg was ever at any time before or since the date of said conveyances to this defendant the real or beneficial owner of said lands, and denies that said J. A. Rhomberg has now or ever at any time had any interest in said lands or in any of them; and defendant denies that the conveyances of said lands to this defendant as aforesaid were made for the use and benefit of the said J. A. Rhomberg, and denies that said conveyances were so made for the purpose or with the intent of violating said laws or of violating any laws and procuring patents for said lands; and defendant expressly denies all knowledge or notice of such acts and things as are charged and set forth in said paragraph twenty-eight of complainant's bill, and expressly denies that he ever par-
84 ticipated in such acts and things as are therein charged or in any other illegal or fraudulent acts or things at any time or place or for any purpose or intent whatever; and defendant says

that on, to wit, April 28, 1886, the said R. S. Hoglen, then the equitable owner of said eleven sections of land, in consideration of six hundred and forty dollars for each section thereof, then and there to him paid by this defendant, sold and conveyed said eleven sections of land to this defendant by his deeds of that date, duly executed and acknowledged and now on file in the general land office of the State of Texas, as the law provides; wherefore defendant says that he then & there became the equitable owner of all of said lands and entitled to receive the patents therefor as the same were subsequently issued and delivered to this defendant by the State of Texas, defendant having previously paid to the treasurer of the State of Texas all the principal and interest due the State of Texas on the purchase of said lands.

85 And defendant further says that all of said conveyances and deeds for said lands from said Maggie L. Rhomberg to said John H. Klein, and from John H. Klein to said R. S. Hoglen, and from said Frank Robinson to said R. S. Hoglen, and from said R. S. Hoglen to this defendant, all bearing the dates and executed and delivered as aforesaid, are on file in the general land office of the State of Texas, and that the same have been passed upon and approved by the commissioner of the general land office of the State of Texas, the Governor of the State of Texas, and other officers of said State entrusted under said laws of said State with the sale of the school lands of said State and the duty of passing the title and issuing the patents of the State to the person entitled to receive the same, and under and by virtue of the applications, tenders of payments, deeds, and conveyances aforesaid, and the full compliance with the requirements of said laws, the title and right to said land being vested in defendant, the said officers of the State, entrusted by its laws aforesaid with the duties of vesting the title of the State in the purchaser of such lands, or his vendee or assignee, did, on May 22, 1886, May 27, 1886, June 11, 1886, June 23, 1886, July 2, 1886, July

86 3, 1886, and January 24, 1887, deliver to this defendant the patents of the State of Texas for said eleven sections of land, dated severally as aforesaid, duly recorded as aforesaid in the land office of the State of Texas, signed by the commissioner of the general land office and the Governor of the State of Texas, and bearing the seal of said land office and the seal of said State, whereby defendant was vested of a perfect and indefeasible title to said lands.

29. Defendant denies that all or any of the above-numbered sections of land were unsold and subject to be purchased by F. B. Jacobs and Malinda Fisher under the above-recited acts of the Legislature of Texas on January 2, 1883, or January 8, 1883, or on any day or date after November 25, 1882, as is alleged in the twenty-ninth paragraph of the complainant's said bill, because said sections of land had all been purchased by said Frank Robinson and Maggie L. Rhomberg on said November 25, 1882. Defendant admits that an application in the name of F. B. Jacobs, in the form and manner prescribed in said above-recited acts of the Legislature of the State of Texas, was filed in the office of the surveyor of

87 Shackelford county, Texas, seeking to purchase the said sections numbered 122, 68, 66, 64, 46, 120, and 62, and that the surveyor's fees of one dollar on each section of said land *was* then and there paid, and that each section was so applied for seperately; and defendant further admits that said surveyor recorded each of said applications on January 2, 1883, in the proper record book of his office, and that he endorsed on said applications "recorded," giving the date, page, and volume of the record, and signed his name thereto, and delivered said applications to the said F. B. Jacobs; but defendant says that said surveyor was not authorized or permitted by the laws aforesaid of the State of Texas to receive said applications and to record the same in the records of his office and to mark the same "recorded," giving date, page, and volume of the record, and sign his official signature to such certificate and deliver the same to said F. B. Jacobs to be used in procuring title to said lands, because said lands had already, to wit, on November 25, 1882,

88 been applied for and purchased by said Frank Robinson and Maggie L. Rhomberg, whose applications therefor, duly made in the form and manner prescribed by said acts of the Legislature of the State of Texas, were received by said surveyor of Shackelford county, and by him duly recorded in the proper record book of his office, the said surveyor endorsing upon each of said applications "recorded," giving the date, page, and volume of the record, and, having signed his name to such certificate, delivered the said application to the said Frank Robinson and Maggie L. Rhomberg as the purchasers of said lands; all of which was done and recorded in the office of said surveyor of Shackelford county on November 25, 1882.

And defendant says that the applications of the said Frank Robinson and Maggie L. Rhomberg were received and recorded and returned to the said applicants by said surveyor, H. C. Jacobs, in person, and that when he received and recorded the applications of the said F. B. Jacobs he had full notice, as also had F. B. Jacobs, that said lands had already been sold; wherefore defendant says that

89 said F. B. Jacobs acquired no right or equity in said lands by said pretended purchase, and that plaintiff has acquired no such right or equity.

And defendant further says that he is informed and believes and so alleges the fact to be that said applications in the name of the said F. B. Jacobs for the purchase of said lands were not in the name of the real person intending to be the actual purchaser thereof, but that the said applications were made at the instance and request and by the procurement and connivance of the said H. C. Jacobs and those interested and acting with him in securing school lands in Shackelford county, and were so made for the use and benefit of the said surveyor and of the plaintiff in this suit, and that the same were not applied for by the said F. B. Jacobs as the real person intending to be the actual purchaser of said lands, which matter will be more fully shown in the succeeding portions of this answer.

And defendant further says that by reason of the provisions of

article 118 of the penal code of the State of Texas in force at and before the date of the said pretended applications in the name of the said F. B. Jacobs were made and still in force, and which
90 said article is fully set forth in the succeeding paragraph thirty one of this answer, the said surveyor, H. C. Jacobs, being interested and actively participating in said purchases in the name of said F. B. Jacobs, the same are void and confer no title or equity in said lands in said F. B. Jacobs or in the plaintiff in this suit, as the assignee of said F. B. Jacobs.

30. Defendant, answering the allegations contained in paragraph thirty of complainant's said bill, says that he is informed and believes that said F. B. Jacobs did not immediately forward to the State treasurer of the State of Texas the said applications, together with one-twentieth of the appraised value of the land therein designated, as alleged by complainant, but said applications were taken to the office of the said State treasurer by said H. C. Jacobs, surveyor of said Shackelford county, in person, and that the payments of the one-twentieth of the appraised value of said lands were made to the said State treasurer by said H. C. Jacobs and not by or on account of said F. B. Jacobs, but on his own account, such payments being made, as the receipts of the State treasurer show, in the name
91 of Jacobs and Fisher, a firm composed of H. C. Jacobs, surveyor of Shackelford county, Texas, and J. L. Fisher, county judge of said Shackelford county, and on account of said F. B. Jacobs, on January 9, 1883, within one week from the date of the applications to purchase and with intent to take advantage of and defeat the previous purchases of said Frank Robinson and Maggie L. Rhomberg before their first payments were made, and upon such information and belief defendant alleges that said first payments were made by the said H. C. Jacobs on his own account and for his own benefit, and that such payments were not made by or on account of the said F. B. Jacobs as the real person actually intending to purchase said lands.

And defendant says that such applications were void.

Defendant admits that the said State treasurer entered a credit on his books in the name of F. B. Jacobs for the amount so received by him, giving in his entries in his books such description of said sections contained in said applications of said F. B. Jacobs as would identify them, and that he, the said treasurer, then issued his receipts for said amounts and forwarded them with the said applica-
92 tions to the commissioner of the general land office of the State of Texas; but defendant says that said payments were made by said H. C. Jacobs, and that the receipts recited that the payments were made by Jacobs & Fisher as aforesaid, and that they were so made; and defendant further says that the said payments were so received by said State treasurer without knowledge of the filing of said Frank Robinson and Maggie L. Rhomberg.

And defendant admits that the commissioner of the general land office filed said applications and receipts in his office and issued his certificates in lieu thereof, setting forth the amounts paid to the State treasurer and the quantity and valuation of the land applied

for; but defendant denies that said F. B. Jacobs presented these last-named certificates, to wit, the certificates aforesaid issued by the commissioner of the general land office to the surveyor of Shackelford county, within ninety days of the date of the record of his applications aforesaid, because defendant is informed and believes and so alleges the fact to be that said certificates were delivered
93 to the said H. C. Jacobs, surveyor, by the commissioner of the general land office at his office, in the city of Austin, and that they never passed through the hands of said F. B. Jacobs, and in this way defendant admits that *that* said certificates were returned to the said surveyor within ninety days, as provided by law; but defendant says that said F. B. Jacobs, by the payment of the first installment of purchase-money to the said State treasurer and procuring the certificate from the commissioner of the general land office, and the return of the same to said surveyor within ninety days from the recording of his said applications, and the performance of all the other acts and things as alleged by plaintiff in said paragraph thirty of said bill, did not invest said F. B. Jacobs or the complainant with any right or equity in said lands because of the previous sale as aforesaid to said Frank Robinson and Maggie L. Rhomberg, pursuant to the terms and conditions of said laws of the State of Texas, by which they and their assignees are vested of the title to said lands; and defendant further says that all of said
94 proceedings were and are void under the provisions of said article 118 of the penal code of said State, fully set forth in the next succeeding paragraph of this answer.

31. Defendant, answering to the allegations contained in the thirty-first paragraph of complainant's said bill, admits that on January 8, 1883, applications, one for each section, in due form, as specified in said above referred to acts of the Legislature, were filed with the surveyor of Shackelford county, in the name of Malinda Fisher, for the purchase of the following sections of the above-described lands, to wit, surveys numbered 76, 162, 116, and 96; but defendant does not believe that said Malinda Fisher paid to the said surveyor the fee of one dollar for each of said sections, and upon such belief denies that such fees were paid, as alleged by complainant, because defendant says that said Malinda Fisher was the wife of said J. A. or John A. Fisher, who was deputy surveyor of said Shackelford county at the time and who actually received and recorded the applications of his said wife for the purchase of said lands, as is fully manifest by said records.
95 And defendant denies that the surveyor of Shackelford county duly recorded each of said applications, or any of said applications, in the proper record book of his office and endorsed the same as "recorded," giving date, page, and volume of such record, and signed his name thereto and delivered the said applications to the said Malinda Fisher; but defendant says that in truth and in fact, as is fully shown by the records of the office of said surveyor and by the records of the general land office of Texas, the said applications were filed by the husband of the said Malinda Fisher, the said J. A. or John A. Fisher, then and there a deputy

surveyor of Shackelford county, the office of said deputy surveyor being created and duly recognized by law, and that said deputy surveyor and not the surveyor did receive and record said applications in the name of his wife, the said Malinda Fisher, recording the same in the proper record book of said surveyor's office on January 8, 1883, and endorsed on each of said applications the word "recorded," giving the date, page, and volume of the record, and signed the same "H. C. Jacobs, S. S. C., T., by J. A. Fisher, deputy," and then made a pretended delivery of said applications to his wife, the said Malinda Fisher.

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And defendant further says that neither said surveyor nor said deputy surveyor was authorized or permitted by the laws of the State of Texas aforesaid to receive said application and to record the same in the records of said surveyor's office and to mark the same "recorded," giving date, page, and volume of the record, and sign his name thereto, and deliver the same to said Malinda Fisher or any other person, to be used in procuring the title to said lands, because the said lands had already, to wit, on November 25, 1882, been applied for and purchased by Frank Robinson and Maggie L. Rhomberg, whose applications therefor, duly made in the form and manner prescribed by said acts of the Legislature of the State of Texas providing for the sale of said lands, were received by said surveyor of Shackelford county and by him duly recorded in the proper record book of his office, the said surveyor endo sing upon each of said applications the word "recorded," giving the date,

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page, and volume, and, having signed his name to such certificate, delivered the same to the said Frank Robinson and Maggie L. Rhomberg, the purchasers of said lands, all of which was done and recorded in the office of said surveyor of Shackelford county on November 25, 1882.

And defendant further says that said Malinda Fisher was, at the date of her said applications and at the dates of all the transactions relating to or connected with her said applications, the wife of the said J. A. or John A. Fisher, who was then & there a deputy surveyor of Shackelford county.

And defendant further says that said lands were not applied for in the separate interest of said Malinda Fisher, nor did the said applications purport to be in her separate interest; and defendant says that said J. A. or John A. Fisher was interested in said applications and in the attempted purchase of said lands.

And defendant further says that article 118 of the penal code of the State of Texas, in force at the time said applications in the name of Malinda Fisher were received and recorded as aforesaid and still in force, provides that "If any person who is an officer or

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clerk in the general land office, or a district surveyor, or a deputy district surveyor, or county surveyor, or his deputy, shall directly or indirectly be concerned in the purchase of any right, title, or interest in any public land in his own name or in the name of any other person, or shall take *take* or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office other than the fees allowed by

law, he shall be fined in any sum not exceeding five hundred dollars." Wherefore defendant says that all the pretended applications in the name of said Malinda Fisher were and are void.

32. And defendant, answering the allegations contained in the thirty-second paragraph of complainant's said bill, admits that the said application in the name of the said Malinda Fisher, together with one-twentieth of the appraised value of each section of land therein designated, were immediately forwarded to the treasurer of the State of Texas, who, then and there having no knowledge or notice of the previous applications to purchase said lands in
99 the names of said Frank Robinson and Maggie L. Rhomberg, thereupon entered a credit in his books in the names of said Malinda Fisher for the amount so received, giving such description of land designated in said application as would identify them, and that then the said State treasurer issued his receipt for said amounts and forwarded the same, with the said applications, to the commissioner of the general land office, who filed said applications and receipts in his office and issued his certificates in lieu thereof, setting forth the amounts paid to the treasurer and the quantity and valuation of the land applied for, which said certificates of the commissioner of the general land office, defendant admits, were presented to the surveyor of said Shackelford county within ninety days from the date of the said applications in the name of the said Malinda Fisher; but defendant is informed and believes and he so states and charges that none of said acts were done or performed by the said Malinda Fisher or for her use and benefit, as alleged by plaintiff in said paragraph thirty-two of said bill, but
100 that the same were done and performed by the said J. A. or John A. Fisher, H. C. Jacobs, and other persons unknown to defendant for their own use and benefit and for the use and benefit of plaintiff.

And defendant says that he is informed and believes, and, believing, so alleges and charges, that said Malinda Fisher did not make the first payment of one-twentieth of the appraised value of said lands to the said State treasurer out of her own funds, but that the same was paid in her name so used by the said J. A. or John A. Fisher, H. C. Jacobs, and other persons for their own use and benefit and for the use and benefit of plaintiff in this suit, and that said Malinda Fisher had no interest in said pretended purchases except such as the said parties gave her for the use of her name; and defendant says that by the acts and proceedings aforesaid the said Malinda Fisher and her assignee, the plaintiff in this suit, acquired no title or equitable interest in said lands or in any of them.

33. Defendant admits that after receiving the said certifi-
101 cates from the commissioner of the general land office, and within less than ninety days of the recording as aforesaid of the applications of F. B. Jacobs and Malinda Fisher, respectively, the said surveyor of Shackelford county entered all of the aforesaid eleven sections of land on his books as sold, as alleged in the thirty-third paragraph of complainant's said bill; but defendant denies that the said surveyor had any authority of law to do and perform

said acts, and says that said acts were illegal and void and vested no right, title, or equitable interest to any of said lands in F. B. Jacobs or said Malinda Fisher or their assignee, the complainant in this suit.

34. Defendant admits that as soon as the said above-named applications had been received by the surveyor of Shackelford county the said F. B. Jacobs and Malinda Fisher executed their respective obligations, each one for the balance of the appraised value of said sections of land above referred to that he or she desired to purchase, therein agreeing to pay the Governor of the State of Texas and his successors in office, on the first of January each year, one-
102 twentieth of the amount of his or her obligation for each section, with eight per cent. interest on such amount of principal as should be due at the time of each payment, giving in each obligation such description of the land as was contained in the application, as is set forth in the thirty-fourth paragraph of complainant's said bill; but defendant denies that any of said sections were purchased by the said F. B. Jacobs or the said Malinda Fisher, and denies that said obligations were authorized by the law, or that the execution thereof created or vested any equitable right to said lands or to any of them in said F. B. Jacobs or said Malinda Fisher or in complainant as their assignee, and defendant says that said obligations were and are void.

35. Defendant admits that said obligations of the said F. B. Jacobs and Malinda Fisher were forwarded to the commissioner of the general land office, as prescribed by section nine of said above-recited act of the Legislature, and that they were each registered and endorsed as such registration and endorsement is directed to be made under said sections of said act, and that, said endorsement being signed by the said commissioner, the said obligations were
103 delivered to the said treasurer of the State of Texas, by whom they were filed in his office on the — day of ——, 1883, where they still remain, as alleged in the thirty-fifth paragraph of said complainant's bill; but defendant denies that any of said obligations have matured, except as to the annual payments of one-twentieth each year, and denies that any of them have been paid off and discharged, except as to the installment of principal and interest which have matured.

And defendant further says that said obligations were so executed and forwarded to the commissioner of the general land office and by said commissioner endorsed and registered, and by said commissioner delivered to the State treasurer, in whose office the same have been filed without warrant or authority of law and in violation of law, and that such acts were and are illegal, fraudulent, and void, and vested no title or equitable right in said lands in the said F. B. Jacobs or the said Melinda Fisher or either of them or in the complainant as their assignee.

And further defendant says that the acts of the said State treasurer in accepting the first payment of one-twentieth of the assessed value of said lands on the applications of the said F. B. Jacobs
104 and Malinda Fisher, and the acceptance by said treasurer of

all subsequent payments of principal and interest on said pretended purchases made by said F. B. Jacobs and Malinda Fisher and by the complainant as their assignee, and all entries and records made by said treasurer in the records and books of his office relating to said applications and the payments made thereon were and are without warrant or authority of law, and the said acts of the said State treasurer and the entry of the same in the records of his office aforesaid and all other acts connected with the said applications of the said F. B. Jacobs and Malinda Fisher were and are illegal, fraudulent, and void, and vested no title or equitable right in said lands in said F. B. Jacobs and Malinda Fisher or either of them or in the plaintiff as their assignee.

36. Defendant, answering the allegations contained in the thirty-sixth paragraph of complainant's said bill, denies that said F. B. Jacobs and Malinda Fisher or either of them purchased said sections of land or any of them, but defendant admits that said
105 F. B. Jacobs, under date of March 12, 1883, executed a deed to said plaintiff purporting to convey to said plaintiff said sections numbered 96, 166, 76, and 162, and that on the same day the said Malinda Fisher, joined by her said husband, J. A. or John A. Fisher, executed their deed to plaintiff purporting to convey to plaintiff said sections numbered 122, 68, 66, 64, 46, 120, and 62, but defendant says that said pretended deeds have not been filed in the general land office, as required by the provisions of the said fifteenth section of the aforesaid act of July 9, 1879, nor does the plaintiff allege that plaintiff paid any consideration for said conveyances.

And defendant denies that said F. B. Jacobs and Malinda Fisher purchased said lands or any part thereof, and says that he does not believe any consideration valuable in law was paid by plaintiff to said F. B. Jacobs and Malinda Fisher or either of them for the purchase of said lands, and upon such belief alleges that said deeds were executed without consideration, or if any consideration was paid it was not for the purchase and conveyance of the said lands, but for the use of the names of said F. B. Jacobs and Malinda Fisher in the fraudulent purpose of plaintiff to secure said
106 lands in violation of the rights of the said Frank Robinson and Maggie L. Rhomberg, of whose claims and rights the plaintiffs had full notice before his pretended purchase, as did also his said vendors.

And defendant says that said pretended conveyances were not warranted or authorized by law, and that the same are illegal and void and vest no title or equitable right in said lands in plaintiff.

37. Defendant, answering the allegations contained in the thirty-seventh paragraph of complainant's said bill, denies that said F. B. Jacobs and Malinda Fisher purchased said lands in the month of January, 1883, and says that the acts and things done by the said F. B. Jacobs and Malinda Fisher, as set forth in complainant's said bill and as admitted and set forth in this answer of defendant, do not constitute a valid, equitable purchase of said lands as required against this defendant; and defendant admits that no payment had been made on said lands by any other purchaser up to the time that

said F. B. Jacobs and Malinda Fisher made their applications as aforesaid and their first payments as aforesaid and executed their
107 obligations for the balance as aforesaid; and defendant denies that said J. A. Rhomberg pretended to act for said Frank Robinson and Maggie L. Rhomberg in tendering to the State treasurer the first payments under their said applications made and recorded as aforesaid on November 25, 1852, but defendant says that said J. A. Rhomberg, as the agent of the said Frank Robinson and Maggie L. Rhomberg, and by their authority and for their use and benefit, in good faith, on January 18, 1883, within less than ninety days from the record of their said applications as aforesaid in the office of the surveyor of Shackelford county, did tender to the State treasurer of the State of Texas, at his office in Austin, Texas, the sum of thirty-two dollars, the same being one-twentieth of the appraised value thereof, on each of the following sections, to wit, 46, 120, 122, and 162, applied for and purchased as aforesaid by Frank Robinson, and at the same time presented to the State treasurer the application for the purchase of said sections of land made by the said Frank Robinson as aforesaid duly recorded as aforesaid; and at the same time and
108 place the said J. A. Rhomberg, acting as her agent, did tender to the said State treasurer the sum of thirty-two dollars, the same being one-twentieth of the appraised value thereof, on each of the following-numbered sections, to wit, 66, 68, 76, 62, 96, 64, and 116, applied for and purchased as aforesaid by said Maggie L. Rhomberg, and at the same time presented to the said treasurer the applications for the purchase of said sections of land made by the said Maggie L. Rhomberg as aforesaid, duly recorded as aforesaid; and defendant further says that said J. A. Rhomberg, as the duly authorized agent of the said Frank Robinson and Maggie L. Rhomberg, did then and there, to wit, on January 18, 1883, in behalf of the said Frank Robinson and Maggie L. Rhomberg, respectively, tender to said State treasurer the aforesaid sum of thirty-two dollars on each section of land so applied for and purchased by said Frank Robinson and Maggie L. Rhomberg, respectively, the same being one-twentieth of the appraised value thereof as made under said law as aforesaid, and then and there demanded that said State treasurer should receive said sums of money so tendered as aforesaid, and that said treasurer should then and there enter a credit on his books in the
109 names of the said purchasers respectively for the amount so tendered in behalf of each, giving such description of the land purchased by each of said applicants as would identify the same, and that the said State treasurer should issue his receipt to each of said applicants for the amount so tendered in his or her behalf, and to forward such receipts, with the said applications, to the general land office of the State of Texas, so that said commissioner of the general land office could file said applications and receipts in his office and could issue his certificate in lieu thereof, setting forth the amount paid to the treasurer and the quantity and valuation of the land applied for by each of said applicants, the said Frank Robinson and Maggie L. Rhomberg, so that they could severally return the said certificates of the commissioner of the general land office to

the surveyor of Shackelford county, and have said sections of land marked on the books of his office as sold within ninety days from the date of the record of said applications to purchase as aforesaid; all of which said acts were lawful, and the same were required and commanded to be done by the said State treasurer under the
110 provisions of section seven of said amendatory act, April 6, 1881.

Yet defendant says that the said State treasurer, disregarding his said official duty and in violation of the provisions of said laws, and in disregard of the legal and equitable rights of the said Frank Robinson and Maggie L. Rhomberg, did unlawfully and wrongfully refuse to receive the payments so tendered as aforesaid, and did refuse to do and perform any and all of the other acts and things required to be done under the provisions of the laws aforesaid for the reason, as then stated in his endorsement made on each of said applications, that the payments so tendered were refused because of previous payments, meaning thereby the payments unlawfully made in the names of said F. B. Jacobs and Malinda Fisher on January 9, 1883, and January 15, 1883, as aforesaid.

And defendant, while he admits that the said State treasurer refused to receive the payments so tendered as aforesaid by said Frank Robinson and Maggie L. Rhomberg, denies that the said State treasurer refused to recognize said Frank Robinson and Maggie L. Rhomberg as the purchasers of said lands, and denies that said treasurer
111 ruled that said F. B. Jacobs and Malinda Fisher or either of them were the purchasers and owners of all of said sections of land or of any of said sections until they transferred the same; and defendant says that said State treasurer, under an erroneous and false construction and interpretation of his duties under said acts of the Legislature in such cases, ruled that he would not receive a second payment on any section of land in cases where a payment had already been made on the same section, notwithstanding such payment first made was on a junior application and void under the law as against the older and prior application, the said State treasurer holding that the conflict of right between purchasers in such cases should be settled by the courts; but defendant says that such ruling was erroneous and against the plain provisions of said laws, and that the duties of the treasurer under the provisions of said laws were wholly ministerial, and that he was vested of no discretion in such matters. Wherefore defendant says that the erroneous rul-
112 ings of said treasurer and his refusal to accept the moneys tendered as aforesaid in behalf of said Frank Robinson and Maggie L. Rhomberg on their said applications did not operate to defeat or forfeit their said applications and did not in any manner effect or impair their several rights and equities thereunder; and defendant denies that said State treasurer continued for several years to recognize the assignee of said F. B. Jacobs and Malinda Fisher as the owners of said lands, and that as such owners and purchasers he received from them the annual payments thereon as the same matured, because defendant says that while he admits that said treasurer did recognize said F. B. Jacobs and Malinda Fisher as

purchasers of said lands, and did receive their first payments as aforesaid, and did continue for several years to recognize the plaintiff, their assignee, and to receive from *from* plaintiff the annual payments thereon, as alleged by plaintiff in said thirty-seventh paragraph of said bill, yet the said State treasurer never ruled nor intended to rule that said F. B. Jacobs and Malinda Fisher were the owners and purchasers of said land, or that their assignee, the
113 plaintiff, was the owner, or that said Frank Robinson and Maggie L. Rhomberg were not purchasers thereof; nor did he decide nor pretend to decide these conflicting claims to said lands, but all that he did rule and decide was that, the payments on said lands having been made first by said F. B. Jacobs and Malinda Fisher, he would receive no payments thereon by any other person, and for this reason alone, to adhere to his ruling, he refused the payment by Frank Robinson and Maggie L. Rhomberg, leaving the parties to determine the question of prior right in the courts having jurisdiction of such matters; and defendant denies that said F. B. Jacobs and Malinda Fisher or either of them or their said assignee, the plaintiff in this suit, acquired any right or advantage by the payments aforesaid made in their behalf, and that said Frank Robinson and Maggie L. Rhomberg and their assigns have forfeited and lost no right or advantage which they possessed and to which they were and are entitled under the provisions of said acts of the Legislature as applicants for and purchasers of said lands.

114 And defendant admits that it is true that said J. A. Rhomberg, for said Frank Robinson and Maggie L. Rhomberg, continued for several years to tender payments on their said applications to the said State treasurer, and that the same were refused by said State treasurer; but defendant denies that such refusal of the State treasurer defeated or forfeited or impaired any right which the said Frank Robinson and Maggie L. Rhomberg or their assignees acquired in said lands by reason of their said applications made and recorded as aforesaid on November 25, 1882.

And defendant further says that immediately after making the tenders of payment, as aforesaid, on January 18, 1883, to wit, on February 15, 1883, by their said agent and attorney-in-fact, the said J. A. Rhomberg, the said Frank Robinson and Maggie L. Rhomberg did file in the general land office of the State of Texas and in each of the files, in the names of said F. B. Jacobs and Malinda Fisher, a copy of the application of said Frank Robinson or Maggie L. Rhomberg, as the case might be, for the purchase of the same sections of land, with its certificate of record in the office of
115 the surveyor of Shackelford county as aforesaid, and the certificate of the treasurer of the State of Texas showing that tender of the first payment of the assessed value had been made thereon and refused on January 18, 1883, as aforesaid, and also filed therewith a protest against the pretended purchases in the name of said F. B. Jacobs and Malinda Fisher and claiming said lands under the purchases made by said Frank Robinson and Maggie L. Rhomberg as aforesaid, all of which the said F. B. Jacobs and Malinda Fisher and their assignee, the plaintiff in this suit, had due

notice; and defendant says that again, on February 23, 1884, the said Frank Robinson and Maggie L. Rhomberg, by their said attorney and agent, J. A. Rhomberg, did again make tender to said State treasurer of thirty-two dollars on each section of said lands by them severally applied for and purchased as aforesaid, and that said treasurer then and there refused to receive the same, as before, and gave a like reason for such refusal as before given, again endorsing such reason for his refusal on said applications.

116 And defendant further says that thereafter, to wit, on March 1, 1884, the said Frank Robinson and Maggie L. Rhomberg, by their attorney and agent, J. A. Rhomberg, did make to said State treasurer tender of the sum of six hundred and sixty-nine dollars and forty-seven cents on each section of said land by them severally applied for and purchased as aforesaid, the said sum so tendered being the full amount of principal and interest then due on said purchases, and again the said State treasurer did unlawfully and wrongfully refuse to accept said payments so tendered, still adhering to his erroneous ruling, and endorsing a like reason as before for such refusal on the said applications.

And, further answering, defendant says that afterward, to wit, on February 17, 1885, the said Frank Robinson and Maggie L. Rhomberg, by their said attorney and agent, again made tender of the sum of thirty-two dollars on each section of said lands by them severally purchased as aforesaid, when the State treasurer, hav-

117 ing been advised and informed as to his duties in the said matter, and recognizing the rights of said Frank Robinson and Maggie L. Rhomberg in said lands, and deciding and ruling that they were the purchasers and owners thereof under their said applications, and entitled to pay the purchase-money therefor as in said acts specified and provided, did accept said payments so tendered by said Frank Robinson and Maggie L. Rhomberg on the sections of said lands by them respectively applied for and purchased as aforesaid, and did recognize the said Frank Robinson and Maggie L. Rhomberg as the purchasers and owners thereof, and did enter credits on his books in the names of said Frank Robinson and Maggie L. Rhomberg for the amount so received from them severally, giving such descriptions of the land so purchased by each as would identify the same; and the said State treasurer did then issue his receipts to each of said purchasers, Frank Robinson and Maggie L. Rhomberg, for the amount paid by him or her as aforesaid, and forwarded said receipts, together with the applications of the said Frank Robinson and Maggie L. Rhomberg, to the

118 general land office of Texas, and the commissioner of the general land office did then and there file said applications and receipts in his office, and did issue and deliver to said Frank Robinson and Maggie L. Rhomberg severally his certificates in lieu thereof, setting forth the amount paid to the treasurer by each of said purchasers and the quantity and valuation of the lands applied for and purchased by each of them.

And defendant further says that on March 5, 1885, the said Frank Robinson, having made the first payment on said sections num-

bered 46, 120, 122, and 162, and having done and performed all the other acts necessary to authorize him to sell said lands under the provisions of said laws as aforesaid, did sell and convey the said sections to the said R. S. Hoglen as aforesaid, and that on February 28, 1885, the said Maggie L. Rhomberg, having made the first payment on said sections numbered as follows, 66, 68, 76, 62, 96, 64, and 116, and having done and performed all the other acts necessary to authorize her to sell said lands under the provisions of said laws as aforesaid, did sell and convey the said sections to the said
119 John H. Klein, as aforesaid, being joined in said conveyance by Jacob Rhomberg, her husband, and that the said John H. Klein did thereafter, to wit, on March 13, 1885, sell and convey said last-mentioned sections of land to the said R. S. Hoglen, who thereby became the owner of all of said eleven sections of land; and defendant says that on April 26, 1886, and by his deeds of that date, the said R. S. Hoglen did sell and convey said eleven sections of land to this defendant, who thereby became and still is the owner of the same.

38. Defendant, answering the allegations contained in paragraph thirty-eight of plaintiff's said bill, admits that said Frank Robinson and Maggie L. Rhomberg did not nor did either of them, within ninety days from the date of the record of their applications, make the first payment for any of said lands nor do any of the other things provided by said acts to be done by purchasers within ninety days from the date of the record by the county surveyor of their applications, whereby they claim of date November 25, 1882; but defendant says that said applications for the purchase of said lands were made in due form, as the law requires, by the
120 said Frank Robinson and Maggie L. Rhomberg, as hereinbefore set forth, and that said applications were by the said county surveyor of Shackelford county duly received in his office, and the same were by said surveyor duly recorded in a well-bound book kept in his office for that purpose, and that said surveyor did then and there endorse upon said applications and upon each of them "recorded," giving the date, page, and volume of such record, and did sign his name thereto, and did then and there, on November 25, 1882, deliver said applications to said Frank Robinson and Maggie L. Rhomberg respectively; and defendant further says that under the provisions and requirements of said acts of the said Legislature of the State of Texas the said applicants were allowed ninety days from the date of the record of their applications aforesaid to make the first payment of purchase-money, as provided by said section seven of said amendatory act of April 6, 1881, to the treasurer of the State of Texas, and procure the certificate of the commissioner of the general land office and return the same
121 to said surveyor, who was then required to mark said lands in his record books as sold.

And defendant says that within ninety days from November 25, 1882, to wit, on January 18, 1883, the said Frank Robinson and the said Maggie L. Rhomberg, by their said agent, J. A. Rhomberg, did make tender of the first payments on all of said sections of land to

the said State treasurer, who wrongfully and unlawfully refused to accept the same, as is fully set forth in the next preceding paragraph, thirty-seven, of this answer, to which reference is here made; and defendant further says that the said Frank Robinson and Maggie L. Rhomberg did not abandon or surrender their said applications to purchase said lands or their privilege and right to complete the purchase of the same as provided in said laws, nor did they surrender or abandon any right thereto acquired under their said applications, nor did either of them surrender or abandon any right so acquired to any of said lands, but they and each of them continued constantly and persistently to urge their said claims and to induce the said treasurer to accept their tender of purchase money as aforesaid, and in the
122 prosecution of said claims to said lands and in pursuance of their continuous efforts to procure the acceptance of their tenders of purchase-money by the said State treasurer as aforesaid and to give notice to said F. B. Jacobs and Malinda Fisher and all adverse claimants of said lands and to all persons whomsoever that they had not surrendered or abandoned any right in said lands secured to them by the law under their said applications, did, through their said agent, J. A. Rhomberg, on February 15, 1883, and again on April 23, 1884, file in the general land office of the State of Texas, in each of the files of said F. B. Jacobs and Malinda Fisher for the said lands under their said applications made on January 2, 1883, and January 8, 1883, as aforesaid, a protest against the claims of said F. B. Jacobs and Malinda Fisher, and notice of the applications, records thereof, tenders of payment thereon to the State treasurer as aforesaid, and of the claims of said applicants thereto, either of the said Frank Robinson or the said Maggie L. Rhomberg, according as the particular section to which such files belonged was in-
123 cluded in the application of the one or the other of said applicants, and *in* such protests and notices have remained in said files as archives of the general land office from the date of their filing as aforesaid, — all of which the said F. B. Jacobs and Malinda Fisher and the plaintiff in this suit had full notice; and defendant further says that said Frank Robinson and Maggie L. Rhomberg, for the purpose of further prosecuting their said claims to said lands and of asserting and protecting their said rights therein as purchasers thereof, not only made tender to the State treasurer of their first payments on January 18, 1883, as aforesaid, within ninety days allowed them to make the said payments, but renewed the tenders of such payments on February 23, 1884, and on March 1, 1884, on the said last-named date tendering the full amount of principal and interest then due, all of which tenders were refused, and on February 17, 1885, again made tender to said State treasurer of such payments, which last tender was accepted, and all the entries and records thereof required by law were made by said State treasurer in the records of his office, and he thereupon issued his receipts
124 for such payments, as the law required, and forwarded such receipts and the applications of the said Frank Robinson and Maggie L. Rhomberg to the general land office, where the same were

received by the commissioner of the general land office, and certificates in lieu thereof were executed by said commissioner of the general land office and delivered to the said purchasers, Frank Robinson and Maggie L. Rhomberg, all of which acts are specifically set forth in the preceding paragraph, thirty-seven, of this answer and in other portions of this answer, to which reference is here made; and said lands being thereafter sold and conveyed to this defendant, as aforesaid, this defendant made to the State treasurer full payment of the amounts of principal and interest due on each of said sections of land, as follows: On said survey No. 46 the sum of seven hundred and seventy-seven dollars and twenty-nine cents on May 18, 1886; on each of the sections numbered 120 and 122 the sum of seven hundred and seventy-seven dollars and seventy cents on May 21, 1886; on section numbered 162 the sum of seven
125 hundred and eighty dollars and ninety-three *three* cents on June 15, 1886; on section numbered 116 the sum of seven hundred and eighty-one dollars and seven cents on June 16, 1886; on each of the sections numbered 76, 68, and 96 the sum of seven hundred and eighty-one dollars and thirty-four cents on June 18, 1886; on each of the said sections numbered 62, 64, and 66 the sum of seven hundred and eighty-two dollars and seventy-two cents on June 28, 1886, which said payments the said State treasurer then and there received on account of and in full settlement and payment of the purchases of said sections of land by said Frank Robinson and said Maggie L. Rhomberg, as aforesaid, and then and there issued his receipts therefor as required by said acts of the Legislature, which said receipts were filed in the general land office and the proper entries and records thereof made by the commissioner of the general land office at the following times and dates, to wit, on said survey numbered 46, on May 19, 1886; on said survey numbered 120, on May 22, 1886; on said survey numbered 122, on May 28, 1886; on said surveys numbered 116, 68, and 96,
126 on June 21, 1886, and on said surveys numbered 62, 64, 66, and 76, on June 28, 1886, where the same still remain.

And defendant says that by the payments made as aforesaid and other acts of the said Frank Robinson and Maggie L. Rhomberg and their assignees aforesaid, and the receipt of said payments by the State treasurer as aforesaid, and the other acts and things done by said State treasurer as aforesaid, and the filing of said receipts of said State treasurer for said payments in the general land office, together with the said applications and the issuance and delivery of the certificates of the commissioner of the general land office in lieu thereof as aforesaid, and the other acts and things done and performed as aforesaid by said commissioner of the general land office, vested in this defendant the full, complete legal title to said lands as the assignee of said Frank Robinson and Maggie L. Rhomberg, and entitled defendant to the patents therefor, which were duly executed and delivered, as is fully set forth in other portions of this answer, to which reference is made; and defendant denies that said applications of the said Frank Robinson and the said Maggie
127 L. Rhomberg or any claim or right thereunder was ever sur-

rendered, abandoned, or forfeited, either by said original applicants and purchasers or by their assignees or any of them.

39. Defendant, answering the allegations contained in paragraph thirty-nine of plaintiff's bill, denies that several years after the making of the said applications to purchase by the said Frank Robinson and Maggie L. Rhomberg on November 25, 1882, to wit, in the year 1886, that the said State treasurer changed and reversed his ruling in regard to the effect of said applications and accepted from their pretended assignee the whole of the purchase-money for said eleven sections of land and gave his receipt therefor, but defendant says that tenders of payments in behalf of said Frank Robinson and of said Maggie L. Rhomberg were made to said State treasurer on January 18, 1883; again on February 23, 1884; and on March 1, 1884, the full amount then due was tendered to said State treasurer, all of which tenders were refused, as the same has been already fully set forth in this answer; but defendant says
128 that the said State treasurer having informed himself as to the rights of said Frank Robinson and Maggie L. Rhomberg, as purchasers of said lands, and being fully advised as to their rights as such purchasers and of the law defining his official duties in said matters, on February 13, 1885, did accept and receive from said Frank Robinson and from said Maggie L. Rhomberg, by their said agent, J. A. Rhomberg, the said first payment of thirty-two dollars on each and every section of said lands by them severally applied for and purchased as aforesaid, as the same has already been fully set forth in this answer; and defendant further says that this defendant having become the owner of said sections of land by transfers duly executed and filed in the general land office, as set forth in the twenty-eighth and thirty-seventh paragraphs of this answer and in other portions of this answer, to which reference is here made, on May 18, 1886, May 21, 1886, June 15, 1886, June 16, 1886, and on June 28, 1886, this defendant, as the assignee
129 of the said Frank Robinson and as the assignee of the said Maggie L. Rhomberg, and the owner of said lands as aforesaid, paid to the said State treasurer the full amounts of principal and interest then due on all of said eleven sections of land, for which said State treasurer executed his receipts, showing that the same were fully paid for, and forwarded such receipts to the general land office, where they now remain, as has already been fully set forth in the preceding paragraph thirty-eight of this answer and in other portions of this answer, to which reference is here made; and defendant admits that the commissioner of the general land office of the State of Texas, in the months of May, June, and July, 1886, and also in the month of January, 1887, did issue patents for each and all of said eleven sections of lands, numbered aforesaid, to this defendant as the assignee of the said Frank Robinson and as the assignee of the said Maggie L. Rhomberg under the chain of transfers set forth in paragraphs twenty-eight and thirty-seven and other portions of this answer, to which reference is hereby made;
130 and defendant admits that the Governor of the State of Texas approved said patents and signed the same, and that the

same were duly recorded in the general land office of the State of Texas, and were then and there delivered to this defendant as the owner thereof. Said patents are dated and were delivered as follows: Said survey No. 46 on May 22, 1886; survey No. 120 on May 27, 1886; survey No. 122 on June 11, 1886; said survey No. 116 on June 28, 1886; said surveys Nos. 66, 76, 62, and 64 on July 2, 1886; said survey No. 162 on July 3, 1886, and said surveys Nos. 68 and 96 on January 24, 1887, whereby this defendant became vested of the legal title in fee simple to all of said eleven sections of land and is still so vested.

And defendant denies that said F. B. Jacobs and Malinda Fisher ever purchased said sections of land or any of them; and defendant denies that said patents were wrongfully or fraudulently issued to the defendant, and denies that the same were issued without authority of law and in disregard of any rights of the said plain-
131 tiff; and defendant says that said patents were lawfully and rightfully issued as aforesaid to defendant, with the authority of law and in due course of law.

40. Defendant, answering the allegations contained in paragraph forty of plaintiff's said bill, says that he has no information or knowledge of the fact whether or not plaintiff has been in the actual possession of all of said sections of land, having them enclosed and using them for a pasture since March 12, 1883, continuously claiming ownership thereof, paying the State and county taxes annually assessed against the same, but defendant believes that plaintiff has had possession of said lands as claimed, and that he has had the same enclosed and has used the same as he avers, and that he has claimed ownership thereof, and has paid State and county taxes assessed upon the same; but defendant says that plaintiff had no authority or right under the law to take and maintain such possession of said lands or any of the same, and that plaintiff had no authority or right under the law to enclose said lands and use the same as a pasture or
132 in any other way, and that its claim of ownership is fraudulent and void. Defendant further says that while he believes it to be true that plaintiff has paid State and county taxes on said lands, yet that he is informed and believes that plaintiff procured said lands to be assessed for taxes in its name as one of the devices resorted to by plaintiff to fraudulently acquire title thereto; and defendant is informed and believes and upon such information and belief avers that the said sections of land under said pretended purchases of said F. B. Jacobs and Malinda Fisher having been stricken from the abstract books of the general land office and of the comptroller's office and stricken from the rolls as taxable property, or at least ordered to be so stricken from said rolls; but defendant says that said eleven sections of land are placed on said abstract books in the general land office and in the comptroller's office in the name of this defendant as the assignee of the said Frank Robinson and of the said Maggie L. Rhomberg and as the patentee and owner thereof, and that the same have been
133 duly assessed for State and county taxes as the property of this defendant under his said title, and that he has paid the

taxes due thereon, State and county, for the years 1886 and 1887, being all the years for which such taxes have become due and payable under the purchases in the names of said Frank Robinson and said Maggie L. Rhomberg.

41. Defendant admits that on February 14, 1887, he filed his suit against the said plaintiff in the United States circuit court for the northern district of Texas, at Dallas, on the law docket of said court, said suit being an action of trespass to try title to said eleven sections of land, to dispossess the said plaintiff of the possession of said lands, and to recover from said plaintiff five thousand dollars for the unlawful use and occupation thereof; and defendant also admits that each section of said land is of the value of one thousand dollars or more, as is alleged by plaintiff in paragraph forty-one of said bill.

42. Defendant admits that defendant, in his petition filed in said suit, avers that he, this defendant, owns the legal title to
134 all of said eleven sections of land under and by virtue of said patents issued to him as assignee as aforesaid, and that he does not in said pleadings assert any other or different title to any of said sections of land, as is averred in paragraph forty-two of plaintiff's said bill; and defendant says that such averments are true, and that he is the real and true owner of said eleven sections of land.

43. Defendant, answering the averments contained in paragraph forty-three of plaintiff's said bill, admits that plaintiff has been duly cited to appear and defend said action, and that he, plaintiff, has been advised, and correctly advised, that said patents give to this defendant the legal title to said lands; but defendant denies that his, this defendant's, title to said lands is a pretended legal title, but says that his said title is the superior, valid, fee-simple title to said eleven sections of land; and defendant denies that said plaintiff has any right or title to said lands, and denies that said
135 plaintiff has any equitable title or equitable right or claim in said sections of land or in any part thereof, and says that defendant ought not to be enjoined from prosecuting his said suit at law against said plaintiff.

44. Defendant, answering the allegations contained in paragraph forty-four of plaintiff's said bill, denies that said patents issued to this defendant as aforesaid are pretended patents, but says that said patents were issued according to and under the law by the commissioner of the general land office and the Governor of the State of Texas, and that they vest the valid, legal, and indefeasible fee-simple title to all of said eleven sections of land in this defendant; and defendant denies that said patents are a cloud upon the plaintiff's equitable title to said lands, because defendant says that plaintiff has no such equitable title to said lands or to any part thereof; and defendant admits that so long as the said patents to defendant exist that plaintiff will not be permitted to fully and peaceably enjoy his pretended and spurious equitable title thereto, nor to ac-
136 quire a patent thereto, to which defendant says plaintiff is not entitled.

44. And, further answering, defendant says that the Legislature of the State of Texas, by an act duly approved on April 14, 1883, provided that a land board should be created, to consist of three persons to be appointed by the Governor and of the Governor and comptroller, who should be *ex officio* members thereof, and the second section of said act contained the following provisions, to wit: "It shall be the duty of the land board provided for in section one of this act to ascertain by investigation whether any illegal or fraudulent purchases have been made by any person or persons of any of the lands set apart for the benefit of the common-school fund and authorized to be sold under an act approved July 8th, 1879, and an act amendatory thereof approved April 6th, 1881, in which the county or district surveyor or his deputy acting for him in the county in which such land is situated acted as agent for the purchaser in making
the application to purchase, or in which any one person has
137 acquired or by application attempted to acquire illegally
more land than he was permitted by law to purchase by the use of the names of persons other than his own or otherwise, or where any person has made an application or file without intending in good faith to take the usual steps required by law to perfect his title, and in cases where the purchase of said lands was not made in the real name of the person intending to be the actual purchaser and where the law has been evaded or violated in any other manner to the prejudice of the State or the school fund, and in case they discover any such illegal or fraudulent purchasers have been made in violation of said acts of 1879 and 1881 in the manner aforesaid, and in case they should conclude that the interest of the common-school fund will be subserved in the institution of suits to annul and set aside such *such* purchase or purchases, it shall be the duty of said board to notify the attorney general of their conclusions, and said
officer shall thereupon institute suit in the name of the State
138 of Texas against all persons who have made such illegal or
fraudulent purchases and their vendee or vendees who may have bought with notice of the illegality or fraud in the purchase under the acts before mentioned."

46. And defendant further says that section six of said last-mentioned act contained the following provisions, to wit: "The suits provided for in this act shall be brought within twelve months from the time this act takes effect, in the county where the land is situated or in the county to which such county where the land is situated is attached for judicial purposes or in the county of the residence of the purchaser or the person for whose benefit the purchase was made, as the State may elect: Provided, that suits for the recovery of such lands against non-residents or corporations shall be brought in the district court of Travis county; and provided further, that in all cases where twenty-five sections or more in excess of the seven sections authorized by law to be purchased have been purchased by or for the benefit of any one person or corporation suits for the recovery thereof shall be brought in the district court of Travis county."

139 47. Defendant further says that section seven of said last-mentioned act contained the following provisions, to wit: "In all cases where files have been made prior to February 3, 1883, upon any of the land set apart for the benefit of the common-school fund and authorized to be sold under the acts of 1879 and 1881, and the first payment on said lands as provided by said act has been made or a tender thereof made to the treasurer and refused by him, and the commissioner of the general land office has failed or refused to file the application of the purchaser and issue his certificate as provided for in the seventh section of the act approved April 6, 1881, and to complete the sale of the land so applied for if the State shall not bring suit to set aside and annul such purchase within twelve months from the time this act goes into effect, it shall be the duty of the commissioner of the general land office to complete and perfect the sale of said land so purchased in accordance with the provisions of the above-recited act of 1881.

140 48. And defendant further says that section ten of said last-mentioned act contained the following provisions, to wit: "No suit shall be instituted by the attorney general under the provisions of this act unless it shall be advised and directed by at least three of the board created by this act."

49. And defendant says that said act was duly passed and approved and went into force on April 14, 1883; and defendant says that an appropriation of five thousand dollars was made to carry out the provisions of said act; that the land board therein provided for was appointed and qualified, and that they made a thorough investigation of all of the matters referred to in said bill, and especially such as are referred to in said second section thereof.

And defendant is informed and believes and avers that said land board made close and careful inquiry and investigation of all purchases of school lands made under the said act of July 8, 1879, and the act amendatory thereof of April 6, 1881, and *plaintiff* is informed and believes that said board reported all persons

141 whom they found or believed to have made fraudulent purchases under the provisions of said acts and as defined in said section two of said act of April 14, 1883, and that they advised and directed the attorney general of the said State to bring suits, as therein provided, against all such persons who had violated the law; and the purchases of said eleven sections of land by said Frank Robinson and said Maggie L. Rhomberg on November 25, 1882, and under which said purchases defendant claims and holds said lands, were not, though duly examined by said land board, found to have been fraudulent, irregular, invalid, or in any manner in violation of said act of April 14, 1883, or in violation of any of the provisions of said acts of July 8, 1879, and April 6, 1881, and the same were not by said board reported to said attorney general, and the said attorney general was not notified, advised, or directed to bring any suits under said act aforesaid against said Frank Robinson or against said Maggie L. Rhomberg or any other person for the recovery of said lands or any part of the same or for the

142 cancellation of said sales to said Frank Robinson and Maggie

L. Rhomberg or for the cancellation of any of said sales, and no such suit was brought within twelve months from the date said act of April 14, 1883, took effect.

Wherefore defendant says that if all the matters, acts, and things averred and charged to have been done by said J. A. Rhomberg with reference to the purchase of the sections of land in paragraphs fifteen to thirty-eight of plaintiff's said bill, and all such matters, acts, and things averred and charged to have been done by the said J. A. Rhomberg in other portions of said bill by insinuation and in-uendo, as well as by direct charges, be really true, as therein averred and charged, all of which defendant denies, yet defendant says that no suit having been recommended to be brought against said Frank Robinson or said Maggie L. Rhomberg or said J. A. Rhomberg for any matters relating to the purchase of said lands or to cancel such purchases within twelve months from this time said act of April 14, 1883, went into effect; and said applications
143 to purchase said sections of land by the said Frank Robinson and Maggie L. Rhomberg having been made as aforesaid prior to February 3, 1883, as provided in the seventh section of said act; and a tender of the first payment on said lands having been made as aforesaid and refused by said State treasurer on January 18, 1883, and before the passage of said act; and the commissioner of the general land office having failed to file the applications of said purchasers and issue his certificates as provided for in the seventh section of said act of April 6, 1881, and the State of Texas not having brought suit to set aside or annul such purchases within twelve months from the time said act of April 14, 1883, went into effect, it therefore became and was the duty of the commissioner of the general land office and other officers of the State of Texas required to act in the completion of such purchases of school lands to complete and perfect the sale of said lands to the said Frank Robinson and the said Maggie L. Rhomberg in accordance with the provisions of said acts regulating and providing for the sale
144 thereof; and if there was any irregularity in the purchase of said lands, or if acts were done not authorized by said act of July 8, 1879, and the act amendatory thereof of April 6, 1881, which would authorize a cancellation of such sales by the State, all of which is denied by the defendant, the provisions of the said act of April 14, 1883, cured all such irregularities and defects and validated and comfirmed the sales so made and directed and commanded the commissioner of the general land office and other officers of the State of Texas to perfect and complete such sales.

And defendant says that by the said act of April 14, 1883, and the provisions thereof aforesaid, and the proceedings had thereunder as aforesaid, that the State of Texas, the vendor in the said sales under which defendant holds and claims said lands, whatever the facts relating thereto may be, waived, abandoned, and released the same and confirmed, validated, and vested the title to said lands in the said Frank Robinson and the said Maggie L. Rhomberg respectively and in this defendant as their assignee; and the defendant avers that if any such acts were done by the said J. A. Rhomberg

or by any other person or persons as are set forth and charged in said paragraphs fifteen to thirty-eight, inclusive, of plaintiff's said bill and in other portions of said bill, all of which defendant believes not to be true, and, so believing, denies the same, yet defendant says that at the time he purchased said lands from the said R. S. Hoglen as aforesaid he had no knowledge or information of any such acts, and that he purchased said lands in good faith, paying a valuable consideration therefor as aforesaid, and without notice of any fraud, irregularity, or defect in the purchase thereof or in the title thereto; and defendant says that he is an innocent purchaser for value and without notice of any of the alleged frauds, wrongs, or irregularities; and defendant further says that at the time he purchased said lands there was in the State treasurer's office and in the general land office no record or notice of any character whatsoever of the applications made for the purchase of said lands in the names of said F. Becker, S. L. Rhomberg, Conrad Becker, J. M. Beechem, M. B. Thompson, Margaretta Rhomberg, or F.
146 M. Robinson, made during the year 1882 and prior to the applications made by the said Frank Robinson and Maggie L. Rhomberg on November 25, 1882, as aforesaid, and that at the time defendant so purchased said lands and long before that time the books of the office of the surveyor of Shackelford county showed that the applications of the said parties made before the said applications of Frank Robinson and Maggie L. Rhomberg, on November 25, 1882, had been abandoned, forfeited, and cancelled, and the same were marked upon the said books as *as* forfeited and abandoned, and defendant says that he had no notice of any of said applications.

50. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer and not herein and hereby well and sufficiently answered, confessed, traversed, and
147 avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ROBERTSON & WILLIAMS,
Solicitors for Defendant.

THE STATE OF ILLINOIS, }
County of Cook. }

A. W. Becker, being first duly sworn, on oath deposes and says that he is the defendant named in the foregoing answer; that he has read the said answer and knows the contents thereof, and that the same is true.

(Signed) A. W. BECKER.

Sworn to and subscribed by the said A. W. Becker before me, Edward J. Woodward, a notary public in and for the county of Cook

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and State of Illinois, duly qualified and commissioned, this . day of April, A. D. 1888.

es, and

[SEAL.] Witness my hand and official seal the day and year last said above written.

(Signed) EDWARD J. WOODWARD,

148 *Notary Public in and for Cook County, State of Illinois.*

The foregoing is endorsed:

"No. 137, chancery. The Monroe Cattle Co. *vs.* A. W. Becker. Answer of the defendant to complainant's bill. Filed May 3, 1888. (Signed) A. J. Houston, clerk."

* * * * * * *

From the Order Book, May Rules.

MAY, 1888.

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137. In Ch'y.

And now, at this day, comes the defendant, A. W. Becker, by his solicitors, Robertson and Williams, and files his answer to the plaintiff's bill of complaint in said cause.

(Signed) ROBERTSON & WILLIAMS,
Solicitors for Defendant.

May 7, A. D. 1888.

* * * * * * *

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER. } No. 137. Chancery.

The replication of The Monroe Cattle Company to the an-

149 swer of A. W. Becker, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the said answer, for replication thereto says that he avers and will ever maintain and prove his said bill to be true, certain, and sufficient in law to be answered unto by said defendant, and that the answer of defendant is uncertain, evasive, and insufficient in law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in law to be replied to and not herein replied to, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as he has in and by his said bill already prayed.

(Signed) LEAKE & HENRY,
Solicitors for Plaintiff.

he foregoing is endorsed as follows:
No. 137, chancery. The Monroe Cattle Company *vs.* A. W. Becker. Replication. Filed May 30, 1888. (Signed) A. J.
150 Houston, clerk, by Jas. D. Adams, deputy.

* * * * * * *

From the Order Book, June Rules, 1888.

JUNE, 1888.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER. } No. 137.

This day came the complainant and filed its replication to defendant's answer.

* * * * * * *

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137. In Ch'y.

In this cause it is agreed an order of publication of testimony may be made and entered, and that the clerk of this court may at once open all depositions on file for the inspection of counsel.

(Signed) W. W. LEAKE,
Solicitors for Pl'ff.
ROBERTSON & WILLIAMS,
Sol's for Def't.

Dallas, Texas, January 23, 1883.

151 THE MONROE CATTLE CO.
vs.
A. W. BECKER. } No. 137.

The defendant, by his solicitors, submits to the court the following statement of his evidence on which he relies in said cause, to wit:

1. Paragraph fifteen of defendant's answer denying all the charges of fraud, evasion of law, all fraudulent intents and purposes, and all illegal acts and things charged to have been done by J. A. Rhomberg in paragraph fifteen of the bill.

2. Paragraph sixteen of the defendant's answer in so far as it denies that any of the applications to purchase, referred to in paragraph sixteen of the bill, were made for the use and benefit of said J. A. Rhomberg.

3. Paragraph seventeen of defendant's answer denying all the charges made in paragraph sixteen of plaintiff's bill.

4. Paragraph eighteen of defendant's answer denying all the averments and charges contained in paragraph eighteen of the bill.

5. Paragraph nineteen of defendant's answer, which denies all the charges contained in paragraph nineteen of the bill.

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152 6. Paragraph twenty of defendant's answer denying the averments and charges contained in paragraph twenty of ... les, and bill. ... said

7. Paragraph twenty-six of defendant's answer, which denies the averments and charges contained in paragraph twenty-six of the bill.

8. Paragraph twenty-seven of defendant's answer, which denies all the averments and charges contained in paragraph twenty-seven of the bill.

9. Paragraph twenty-eight of defendant's answer in so far as it denies the charges contained in paragraph twenty of the bill.

10. Paragraphs 37, 38, and 39 of defendant's answer in so far as they deny the averments and charges contained in paragraphs 37, 38, and 39 of plaintiff's bill.

11. Deposition of R. M. Hall, commissioner of the general land office, and the documents and papers attached thereto.

12. Depositions of F. R. Lubbock, State treasurer, and the documents and papers thereto attached.

13. The depositions of J. A. Rhomberg and the letters thereto attached.

14. The deposition of defendant, showing that he is a *bona*
153 *fide* purchaser for value and without notice of any of the matters charged by plaintiff relating to the purchase of said lands and showing good faith in defendant at every step.

15. Agreement about issue of patents to defendant, etc.

16. Agreement about performance of all preliminary acts necessary to authorize the sale of said lands on and ever after January 1, 1882.

(Signed) ROBERTSON & WILLIAMS,
Sol's for Def't.

Dallas, February 12, 1889.

The foregoing is endorsed as follows:
No. 137, chancery. The Monroe Cattle Co. *vs.* A. W. Becker. Statement of evidence for defendant. Filed February 12, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

* * * * * * *

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137. In Chancery.

In this cause the following agreement and admission of facts is made, to wit:

1. That the eleven sections of land in controversy are of
154 the alternate sections of land surveyed by railroad companies and other works of internal improvement for the benefit of the common-school, fund, and are located in Shackelford county, State of Texas.

2. That said eleven sections of land had been properly surveyed by the surveyor of the proper land district by virtue of valid land

certificates issued by the State of Texas to the East Texas Railroad Company, a railroad corporation, and the field-notes of the surveys of each section thereof had been duly filed in the general land office of the State of Texas and in the surveyor's office, in Shackelford county, State of Texas, before April 6, 1881, and said field-notes were on file in said general land office and in said surveyor's office on and ever after January 1, 1882.

3. That the county surveyor of Shackelford county, State of Texas, had under oath viewed and appraised all the alternate sections of land surveyed and set apart for the benefit of the common-school fund situated in Shackelford county, State of Texas, including the eleven sections in controversy in this cause, and had made his return of such view and appraisement to the county commis-
155 sioners' court of said county of Shackelford, as the law required, prior to January 1, 1882.

4. That said county commissioners' court of said county of Shackelford did examine and duly approve the appraisement of said eleven sections of land as made by said county surveyor, as well as the appraisement of all other alternate sections of land in said county of Shackelford belonging to said common-school fund, before January 1, 1882.

5. That said county commissioners' court of said county of Shackelford, having completed the appraisement of all the alternate sections of land surveyed and set apart for the benefit of the common-school fund located in said county of Shackelford, including the appraisement of the said eleven sections of land in controversy in this suit, made by said surveyor as aforesaid, did prepare a tabulated report of their action, therein setting forth the following facts, to wit, the number of each survey, the block in which each survey was located, the quantity of land in each survey, the name of the company or individual to whom the certificate by virtue of which it was located was granted, the price per acre of each section
156 of land or of each quarter thereof, if any difference existed; value of improvements, and remarks giving general description of the soil, water, and timber, and did file one copy of said report in the office of the surveyor of said county of Shackelford, and did also forward one copy thereof to the commissioners of the general land office of the State of Texas and one copy thereof to the State treasurer of the State of Texas, all of which acts and things were done and performed before January 1, 1882.

6. That said commissioner of the general land office of the State of Texas, having received said appraisement of said alternate sections of land belonging to the common-school fund, located in said county of Shackelford, and the approval thereof by the county commissioners' court of said county of Shackelford and the report aforesaid of said county commissioners' court, examined the said appraisement and report, and finding the same made in conformity with the law relating thereto, and that the said lands, including the said eleven sections in controversy in this suit, were therein prop-
157 erly valued, said commissioner of the general land office approved the same and notified the surveyor of said county

of Shackelford of the fact that he had so approved the same, which notice was received by said surveyor before January 1, 1882, and all of said acts and things were done and performed before January 1, 1882.

7. That all of the sections of land in controversy in this cause were properly classed as land suitable only for grazing purposes, and they were appraised, as aforesaid, by the said surveyor of said county of Shackelford and by the said county commissioners' court of said county of Shackelford at the price of one dollar per acre, which appraisement was duly approved by said commissioner of the general land office, as aforesaid.

8. That no part of the lands in controversy in this cause were located within five miles of the geographical center of said county of Shackelford, nor was any part of said lands located on any water front, and the same were all subject to sale in quantities of seven sections to one person.

9. That on and ever after January 1, 1882, the said eleven sections of land in controversy in this cause were subject to sale
158 under the laws of the State of Texas providing for and regulating the sale of the alternate sections of land surveyed and set apart for the benefit of the common-school fund, then in force, being the said acts of the Legislature of the State of Texas, approved, respectively, on July 8, 1879, and April 6, 1881, the latter act being an amendment of the former act, and all preliminary acts required by law to authorize the sale of said lands had been fully complied with before January 1, 1882.

(Signed) LEAKE & HENRY,
Solicitors for Plaintiff.

ROBERTSON & WILLIAMS,
Solicitors for Defendant.

The foregoing is endorsed as follows, to wit:

No. 157. The Monroe Cattle Co. *vs.* A. W. Becker. Agreement as to certain facts. Filed Feb'y 12, 1889. (Signed) A. J. Houston, clerk.

* * * * * * *

In the Circuit Court of the United States, Northern District of Texas, at Dallas. In Chancery.

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137.

159 Interrogatories to be propounded to F. R. Lubbock, a witness for the defendant, who resides in the county of Travis and State of Texas.

In the Circuit Court of the United States, Northern District of Texas, at Dallas. In Chancery.

THE MONROE CATTLE COMPANY, Complainant,
vs.
A. W. BECKER, Defendant. } No. 137.

Answers and depositions of F. R. Lubbock, a resident of Travis county, Texas, to the accompanying interrogatories propounded to him in the above entitled and numbered cause, taken before R. C. Shelley, a notary public in and for Travis county, Texas, in accordance with the accompanying agreement of counsel and waiver of commission.

Answers to Interrogatories Propounded to F. R. Lubbock.

Int. 1. State your name, place of residence, and what office, if any, you hold. What office, if any, did you hold in the years 1882, 1883, 1884, 1885, 1886, and 1887?

Ans. 1. My name is F. R. Lubbock, and reside temporarily in Austin, Texas. I hold the office of State treasurer, and held said office in the years 1882, 1883, 1884, 1885, 1886, and 1887.

160 Int. 2. Who is the official custodian of the books and records of the office of the State treasurer of the State of Texas?

Ans. 2. As State treasurer I am the custodian of all books and records connected with said office.

Int. 3. In this suit the question at issue is the title and ownership of eleven sections of State school land in Shackelford county, State of Texas, all located by virtue of certificates issued by the State of Texas to the East Texas Railroad Company, the number of each survey and number of the certificate by virtue of which it was located being as follows: Survey No. 146, certificate No. 158; survey No. 120, certificate No. 255; survey No. 122, certificate No. 256; survey No. 116, certificate No. 253; survey No. 62, certificate No. 166; survey No. 64, certificate No. 167; survey No. 66, certificate No. 168; survey No. 76, certificate No. 173; survey No. 162, certificate No. 21–363; survey No. 68, certificate No. 169, and survey No. 96, certificate No. 200. The surveys numbered 162, 122, 120, and 46 are patented to the defendant as the assignee of Frank Robinson, and said surveys No. 66, 68, 76, 62, 96, 64, and 116
161 are patented to the defendant as the assignee of Maggie L. Rhomberg.

The application of the said Frank Robinson to purchase said surveys numbered 162, 122, 120, and 46 was recorded in the office of the surveyor of Shackelford county, Texas, on November 25, 1882, and the application of the said Maggie L. Rhomberg to purchase the said surveys 66, 68, 76, 62, 96, 64, and 116 was recorded in the office of said surveyor on November 25, 1882.

The plaintiff claims said surveys numbered 122, 68, 66, 64, 46, 120, and 62 as assignee of F. B. Jacobs, whose application for the purchase of the same was recorded in the office of the surveyor of said Shackelford county on January 2, 1883, and also claims said surveys numbered 76, 162, 116, and 96 as assignee of Malinda Fisher, whose application to purchase the same was recorded in the office of the surveyor of said Shackelford county on January 8, 1883.

It is averred by defendant in this cause that on January 18, 1883, within less than ninety days from the date of the record of the applications to purchase said lands of said Maggie L. Rhomberg and Frank Robinson in the office of said surveyor of said
162 Shackelford county on November 25, 1882, as aforesaid, the said Maggie L. Rhomberg and Frank Robinson, by J. A. Rhomberg, their agent, did present to the State treasurer of the State of Texas the applications of the said Maggie L. Rhomberg and Frank Robinson, with the certificate of the surveyor of said Shackelford county endorsed thereon, showing that said applications had been duly recorded in said surveyor's office on November 25, 1882, and giving book and page of such record, and that the said Maggie L. Rhomberg and Frank Robinson did then and there, by their said agent, J. A. Rhomberg, tender to the State treasurer of the State of Texas the sum of thirty-two dollars on each section of said lands, the same being one-twentieth of the assessed value thereof. It is also averred that the State treasurer refused to receive said payments, giving as a reason that previous payment had been made on the same lands.

It is also averred by defendant that again, on February 23, 1884, the said Maggie L. Rhomberg and Frank Robinson, by their agent, J. A. Rhomberg, did make due tender to the State treasurer of the State of Texas of thirty-two dollars on each section of said lands, the same being one-twentieth of the assessed value thereof,
163 and that said State treasurer again refused to receive said payments for a like reason as before.

It is also averred that thereafter, to wit, on March 1, 1884, the said Maggie L. Rhomberg and Frank Robinson, by their said agent, J. A. Rhomberg, did again duly tender to the State treasurer of the State of Texas the full amount of principal and interest then due on all of said sections of land under their said purchases made November 25, 1882, the amount tendered on each section being six hundred and sixty-nine dollars and forty-seven cents, and that said State treasurer, for a like reason as before, refused to receive such payments.

It is also averred by defendant that on February 17, 1885, the said Maggie L. Rhomberg and Frank Robinson, by their said agent, J.

A. Rhomberg, did again make tender to the said State treasurer of the sum of thirty-two dollars on each of said sections of land, the same being one-twentieth of the appraised value thereof, and that said State treasurer then and there accepted and received said payments and made the proper entries in the books of his office of the sale of said lands to Maggie L. Rhomberg and Frank Robinson and issued his receipts for such payments, and that said State
164 treasurer forwarded the applications aforesaid of the said Maggie L. Rhomberg and of the said Frank Robinson and his receipts for said payments to the commissioner of the general land office.

It is also averred that on April 23, 1883, the defendant, as assignee of said Maggie L. Rhomberg and of said Frank Robinson, paid to the said State treasurer the full amount of principal and interest then due on the purchase of said lands, to wit, the sum of seven hundred and seventy-three dollars and ninety-one cents ($773.91) on each section thereof, for which payments said State treasurer issued his receipts, which were forwarded and duly filed in the general land office.

You will please answer the following interrogatories relating to -hese matters:

A. Were you the State treasurer of the State of Texas from March 25, 1882, to and including April 23, 1886, when said final payment was received from the defendant?

Ans. 3.

A. I was State treasurer from March 25, 1882, to and including April 23, 1886, and at such other dates when full payments
165 were made by A. W. Becker on account of Frank Robinson for purchase of sections 46, certificate 158; section 120, certificate 355; section 122, certificate 258, and section 162, certificate 21–363, survey for the East Texas Railroad Company, and also on account of Maggie L. Rhomberg for purchase of sections 66, certificate 168; 68, certificate 169; 76, certificate 173; 62, certificate 166; 96, certificate 200; 64, certificate 167, and 116, certificate 253; also surveyed for the East Texas Railroad Company all of said sections, being State school land and situated in Shackelford county, the several dates of said full payments being shown by certified copies of said accounts from the books of this office, appended hereto and marked respectively Appendix 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

B. Was the tender of thirty-two dollars, or one-twentieth of the appraised value of each of said eleven sections of land, made to you on January 18, 1883; if yea, by whom was it made? In whose behalf was said tender made? If made by J. A. Rhomberg, in what capacity was he acting? Was he acting for himself or as agent for some other person *and* persons? And, if as agent, state what person or persons.

166 Ans. B. Tender of thirty-two dollars, one-twentieth of the appraised value of each of said eleven sections of land, was made to me on January 18, 1883. Said tender was made by J. A. Rhomberg for account of said purchasers, Frank Robinson and Maggie L. Rhomberg, as their representative, I having no informa-

tion as to whether said J. A. Rhomberg was acting as agent for any other person or persons.

C. Were the applications to purchase said eleven sections of land, made by said Maggie L. Rhomberg and by said Frank Robinson, as aforesaid, recorded in the office of the surveyor of Shackelford county, Texas, and endorsed by said surveyor with a certificate of such record, presented to you on or about January 18, 1883? If yea, were such applications and the certificates and endorsements thereon in due form? Was the first payment of one-twentieth of the appraised value of said sections of land, thirty-two dollars on each of said sections, tendered to you on the said applications of Maggie L. Rhomberg and Frank Robinson? If yea, was there anything on the face of the papers or any fact within your knowledge which authorized you to reject said applications
167 and to receive payments thereon?

Ans. C. Applications to purchase said eleven sections of land were made by said Frank Robinson and said Maggie L. Rhomberg, recorded in office of the surveyor of Shackelford county and such record certified to, were presented me on or about January 18, 1883, said applications with endorsements thereon and certificates appearing in proper form. Tender of thirty-two dollars, one-twentieth the appraised value, as first payment on each of said applications was made to me, which tender was rejected for the reason that said sections appeared from the books of this office to have been previously paid on, there being nothing upon the face of the papers to cause such refusal.

D. Did you refuse to receive payments of the first installment of the appraised value when tendered as aforesaid on the applications to purchase of said Maggie L. Rhomberg and on the applications to purchase of said Frank Robinson? If yea, why did you refuse it? Was there any older or prior application to purchase said lands? Had these parties failed to comply with the law in
168 any particular? Was such tender made before the expiration of ninety days from the date the applications were recorded in the office of the surveyor of Shackelford county? Was any record of this tender made in the books of your office?

Ans. D. Such tender was refused, as stated, for the reason that first payments had been made previously on said eleven sections of land, it being at that time the ruling of the commissioner of the general land office that not more than one first payment should be received upon school lands. I know of no prior application to purchase said lands, nor do I know of any failure upon the part of said Frank Robinson and said Maggie L. Rhomberg to comply with the law in any particular, the said tender being made before the expiration of ninety days from the date the applications were recorded in the office of the surveyor of Shackelford county. A note of the date said tender was made was entered upon the books of this office. Such entry was also made upon the rejection of tender of payment of interest on said eleven sections on February 23, 1884, which tender was also refused for the reason that the books of this office showed payments to have been previously made upon said

169 eleven *eleven* sections, which two entries are the only record of tender of payments refused that appear upon the records of the office.

E. State whether or not another tender of the first payment of thirty-two dollars on each section of this land under the purchases of the said Maggie L. Rhomberg and of the said Frank Robinson was afterward made. If yea, by whom was it made? In what capacity was said person acting? At what date was this second tender made? Did you accept or refuse to receive it? If refused, for what reason? Did you make a record in your books of this tender and refusal?

Ans. E. I cannot state whether another tender of thirty-two dollars as first payment on each of said purchases of Frank Robinson and Maggie L. Rhomberg was made, or, if so made, no record of such tender appears upon the books of this office.

F. State whether or not a tender was made of the entire amount of principal and interest due on the application of the said Maggie L. Rhomberg and on the application of the said Frank Robin-
170 son. If yea, when was such tender made, what amount was *was* tendered on each section, who made the tender? If made by J. A. Rhomberg, in what capacity was he acting, for himself or for another person or persons? If as agent, state for what person or persons. Did you receive or reject this tender? If rejected, why did you reject it? Did you make any record in your office of this tender and rejection by you?

Ans. F. A tender of the full amount of principal and interest due on the applications of the said Frank Robinson and said Maggie L. Rhomberg, but no accounts for the balance purchase-money appearing in the names of said purchasers upon the books of this office. Said tender was refused, no record of which appears.

G. State whether or not any further tender of payment was made to you on the said applications. If yea, when was it made, by whom was it made, in what capacity was the person acting who made such tender? How much money was tendered on each section? Did you receive it? If yea, in whose behalf and on whose account was it received? Did you make any entries in the records and
171 books of your office of this payment? Did you execute receipts therefor? What did you do with the applications of said Maggie L. Rhomberg and with the applications of said Frank Robinson and your receipts for the payments made you in their behalf? State whether or not you forwarded the same to the general land office.

Ans. G. A further tender of thirty-two dollars as first payment on each of the applications of said Frank Robinson and said Maggie L. Rhomberg to purchase said sections was made by J. A. Rhomberg, as the representative of said purchasers; which said tender was accepted by me, the commissioner of the general land office having ruled that said payments might be properly made, and receipts of this office for said first payments issued on the applications of Frank Robinson on February 23, 1885, and upon applications of Maggie L. Rhomberg on February 17, 1885; which said receipts,

together with said applications of said purchasers, were filed in the general land office and accounts with said purchasers for balance purchase-money of said sections opened upon the books of this office in names of said Frank Robinson and said Maggie L. Rhom-
172 berg.

H. State whether or not the full amount of principal and interest on the said purchases in the name of the said Maggie L. Rhomberg and in the name of the said Frank Robinson have been paid into your office. If yea, when; by whom paid; what amount was paid on each section? Did you make in the books or records of your office any entry of such payment? Did you give receipts for such payment; and, if yea, to whom? State whether or not such receipts were forwarded to the general land office.

Ans. H. The full amount of principal and interest on said purchases of said Frank Robinson and said Maggie L. Rhomberg was paid to this office by A. W. Becker on account of said purchasers, the several dates and amounts of said payments being particularly described in certified copies of said accounts, appended hereto and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11. Receipts for said full payments were duly issued by this office and filed in general land office.

Int. 4. Are you the official custodian of the books and records of the office of the State treasurer of the State of Texas? If yea,
173 you will please make out and duly certify full, accurate, and complete copies of all the papers and records and endorsements thereon in your office relating to the applications of the said Maggie L. Rhomberg and to the applications of the said Frank Robinson for the purchase of said eleven sections of land, and relating to all payments made by them and by their assignees. You will please make a seperate statement and certificate as to each section of land, and your certificate must be attested by the seal of your office. You will state in your answer whether such certified copies are prepared and attached to your answer, and state whether they are full, accurate, and complete copies of all the papers, records, and entries in your office relating to the purchase of said lands by said Maggie L. Rhomberg and Frank Robinson and of the payments thereon, and you will designate such copies as to each sections by number or letter for identification.

Ans. 4. I am custodian of the books and records of the office of State treasurer of the State of Texas. Full, accurate, and
174 complete copies of the accounts of Frank Robinson and Maggie L. Rhomberg for the purchase of said eleven sections of land, as appears from the records of this office, are appended to these answers and numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, & 11, and also copies of such record of tenders as shown by the books, properly certified to under seal of this office and numbered.

Int. 5. Who is recognized in your office and by you, as State treasurer, as the real purchaser and owner of the said eleven sections of land?

Ans. 5. From the date of the record of applications of said Frank Robinson and said Maggie L. Rhomberg they were recognized as

purchasers of said eleven sections by this office, full payments accepted thereon.

Int. 6. Is there in your office any record, document, or entry showing that Margaretta Rhomberg and F. M. Robinson ever made application to purchase the said eleven sections of land or any part thereof?

Ans. 6. Cancelled first-payment stubs upon the records of this office show that Margaretta Rhomberg and C. Becker made application to purchase said eleven sections of land, upon which first payment receipts were issued by this office on May 24, 1882,
175 which said receipts were not recognized by the commissioner of the general land office and filed, for the reason that a transfer on the back of each application appeared to have been made before the first payments were made.

Int. 7. How many alternate sections of school land in Shackelford county purchased under the acts of July 8, 1879, and April 6, 1881, are held and claimed by the Monroe Cattle Company, as shown by the records of your office?

Ans. 7. Payments of interest on school lands in Shackelford county being made by the Monroe Cattle Company at different times and for various purchasers, it cannot be definitely stated how many sections are held and claimed by said company.

Int. 8. Do you know, can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject-matter of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. 8. The foregoing answers embrace all information in
176 the possession of this office material to the matters in question in this cause.

(Signed) F. R. LUBBOCK.

(Interrogatories signed "Robertson & Williams, solicitors for defendant.")

Sworn to and subscribed before me this 4th day of October, 1888.

[SEAL.] (Signed) R. C. SHELLEY,
Notary Public, Travis Co., Texas.

Cross-Interrogatories Propounded by Plaintiffs to the Witness, F. R. Lubbock.

Answers to cross-interrogatories.

Cross 1st. Have you any personal knowledge of the filing of any application to purchase lands in the office of the surveyor of Shackelford county, Texas? Is not your only knowledge of the filing of such application derived from statements and certificates made by other person-?

Ans. 1. I have no personal knowledge of the filing of applications to purchase lands in the office of the surveyor of Shackelford county,

my information with regard thereto being derived from the certificates of the surveyor as they appear upon said applications.

Cross 2d. If, in fact, F. M. Robinson, on the 28 August, 1883, filed his application to purchase surveys Nos. 122, 162,
177 120, & 46 in the office of the surveyor of Shackelford county, which was recorded, after which he took no further steps to complete said purchase, and if Margaretta Rhomberg did the same thing with regard to said sections numbered 76, 116, 68, 96, 64, and 62, would you know anything or would the records of your office show anything about it?

Ans. 2. I would have no information with regard to any steps that would be taken by F. M. Robinson and Margaretta Rhomberg to complete their purchase of the eleven sections of land applied for by them in Shackelford county, except by tender of payments thereon made to my office.

Cross 3. How many sections of school land do the records of your office show were paid for by J. A. Rhomberg as agent or otherwise? State in whose names the purchases were made and in what county the lands are situated.

Ans. 3. No special record of the payments made by J. A. Rhomberg on school lands being kept in this office, statement as to the number of such sections cannot be made.

(Signed) F. R. LUBBOCK.

178 (Cross-interrogatories signed "Leake & Henry, solicitors for pl'ff.")

Sworn to and subscribed before me this 4th day of October, 1888.

[SEAL.] (Signed) R. C. SHELLEY,
Notary Public, T. C., T.

We hereby waive time, notice, and commission and consent that the answers of the witness may be taken to the original, direct, and cross interrogatories before any officer authorized to take and return depositions under the laws of the State of Texas, waiving matters of mere form in taking and returning, but not in waiving any matters of substance.

(Signed) LEAKE AND HENRY,
Solicitors for Plaintiffs.

THE STATE OF TEXAS, }
County of Travis. }

I, R. C. Shelley, a notary public in and for said county, do hereby certify that the foregoing answers of F. R. Lubbock, the witness before named, to the accompanying interrogatories and cross-interrogatories propounded to him were made by said witness before me and were sworn to and subscribed before me by said witness, F. R. Lubbock.

[SEAL.] Given under my hand and seal of office this 4th day of October, 1888.

(Signed) R. C. SHELLEY.
179 *Notary Public, T. C., T.*

Fees, $6.00; paid by A. L. Rhomberg.

(Signed) R. C. SHELLEY,
Notary Public, T. C., T.

APPENDIX 1.

Copy of Account.

Frank Robinson.

Sec. 46, Shackelford county.

First payment, Feb'y 23, '85, $32. Receipt 937.

To oblig.	608 00	
May 18, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	$169 29	
May 18, '86.—By int. May 18, '86		169 29
	169 29	169 29

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true & correct copy of the account of Frank Robinson for the purchase of section 46, E. T. R. R. Co., certificate 158, Shackelford county, as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

180 APPENDIX 2.

Copy of Account.

Frank Robinson.

Sec. 120, Shackelford Co.

First payment, Feb'y 23, '85, $32. Receipt 938.

To oblig.	608 00	
May 21, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	169 70	
May 21, '86.—By int. May 21, '86		169 70
	169 70	169 70

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true & correct copy of the account of Frank Robinson for the purchase of section 120, E. T. R. R. Co., certificate 255, Shackelford county, as appears from the books of this office.

[SEAL.] In testimony whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

181 APPENDIX 3.

Copy of Account.

Frank Robinson.

Sec. 122, Shackelford Co.

First payment, Feb'y 23, '85, $32. Receipt 940.

To oblig.	$608 00	
May 21, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	169 70	
May 21, '86.—By int. May 21, '86		169 70
	169 70	169 70

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and correct copy of the account of Frank Robinson for the purchase of section 122, E. T. R. R. Co., certificate 256, Shackelford Co., as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

182 APPENDIX 4.

Copy of Account.

Frank Robinson.

Sec. 162, Shackelford Co.

First payment, Feb'y 23, '85, $32. Receipt 936.

To oblig.	608 00	
June 15, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	172 93	
June 15, '86.—By int. June 15, '86		172 93
	172 93	172 93

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true & correct copy of the account of Frank Robinson for the purchase of section 162, E. T. R. R. Co., certificate 21–363, Shackelford Co., as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2nd day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

183 APPENDIX 5.

Copy of Account.

Maggie L. Rhomberg.

Sec. 66, Shackelford Co.

First payment, Feb'y 17, '85, $32. Receipt 15604.

To oblig.	608 00	
June 28, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	$174 70	
June 28, '86.—By int. June 28, '86		174 70
	174 70	174 70

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, '88.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 66, E. T. R. R. Co., certificate 168, Shackelford county, as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

184 APPENDIX 6.

Copy of Account.

Maggie L. Rhomberg.

Sec. 68, Shackelford Co.

First payment, Feb'y 17, '85, $32. Rec'pt 15605.

To oblig.	608 00	
June 18, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	173 34	
June 18, '86.—By int. June 18, '86		173 34
	173 34	173 34

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 68, E. T. R. R. Co. certificate 169, Shackelford county, as appears from the books of this office.

[SEAL.] In testimony whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

185 APPENDIX 7.

Copy of Account.

Maggie L. Rhomberg.

Section 76, Shackelford Co.

First payment, Feb'y 17, '85, $32. Rec'pt 15606.

To oblig.	608 00	
June 18, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	173 34	
June 18, '86.—By int. June 18, '86		173 34
	173 34	173 34

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, '88.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 76, certificate 173, Shackelford county, as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

186 APPENDIX 8.

Copy of Account.

Maggie L. Rhomberg.

Sec. 62, Shackelford Co.

First payment, Feb'y 17, '85, $32. Receipt 15602.

To oblig.	608 00	
June 28, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	174 70	
June 25, '86.—By int. June 28, '86		174 70
	174 70	174 70

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 62, E. T. R. R. Co., certificate 166, Shackelford county, as appears from the books of this office.

In witness whereof I hereunto subscribe my name and [SEAL.] affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

187 APPENDIX 9.

Copy of Account.

Maggie L. Rhomberg.

Sec. 96, Shackelford Co.

First payment, Feb'y 17, '85, $32. Receipt 15607.

To oblig.	608 00	
June 18, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	173 34	
June 18, '86.—By int. June 18, '86		173 34
	173 34	173 34

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 96, E. T. R. R. Co., certificate 200, Shackelford county, as appears from the books of this office.

In witness whereof I hereunto subscribe my name and [SEAL.] affix seal of office this 2d day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

188 APPENDIX 10.

Copy of Account.

Maggie L. Rhomberg.

Sec. 64, Shackelford county.

First payment, Feb'y 17, '85, $32. Rec'pt 15603.

To oblig.	608 00	
June 28, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	$174 70	
June 28, '86.—By int. June 28, '86		174 70
	174 70	174 70

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and — copy of the account of Maggie L. Rhomberg for the purchase of section 64, E. T. R. R. Co., ctf. 167, Shackelford Co., as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2nd day of Oct., A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

189 APPENDIX 11.

Copy of Account.

Maggie L. Rhomberg.

Sec. 116, Shackelford Co.

First payment, Feb'y 17, '85, $32. Receipt 15608.

To oblig.	608 00	
June 16, '86.—By prin.		608 00
	608 00	608 00
Nov. 25, '82.—To int.	173 07	
June 16, '86.—By int. June 16, '86		173 07
	173 07	173 07

TREASURER'S OFFICE, AUSTIN, *Oct.* 1, 1888.

I hereby certify the foregoing to be a true and correct copy of the account of Maggie L. Rhomberg for the purchase of section 116, E. T. R. R. Co., certificate 253, Shackelford county, as appears from the books of this office.

[SEAL.] In witness whereof I hereunto subscribe my name and affix seal of office this 2nd day of October, A. D. 1888.

(Signed) F. R. LUBBOCK, *Treasurer.*

The foregoing interrogatories and answers thereto, with exhibits attached, are endorsed as follows, to wit: Filed January 25, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

190 In the Circuit Court of the United States, Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY, Complainant, *vs.* A. W. BECKER, Defendant. } No. 137. In Chancery.

Interrogatories to be propounded to R. M. Hall, a witness for the defendant, who resides in the county of Travis, State of Texas.

In the Circuit Court of the United States, Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY, Complainant, *vs.* A. W. BECKER, Defendant. } No. 137. In Chancery.

Answers and depositions of R. M. Hall, a resident of Travis county, Texas, to the accompanying interrogatories propounded to him in the above entitled and numbered cause, taken before R. C. Shelley, a notary public in and for Travis county, Texas, in accordance with the accompanying agreement of counsel and waiver of commission.

Int. 1. State your name, place of residence, and what office, if any, you hold.

191 Answer to Int. 1. My name is R. M. Hall; I reside at Austin, Travis county, Texas, and hold the position of commissioner of the general land office of the State of Texas.

Int. 2. This is a suit involving the title to eleven sections of school land in Shackelford county, State of Texas, all located by virtue of certificate- issued by the State of Texas to the East Texas Railroad Co., the number of each survey and the number of the certificate- — virtue of which it was surveyed being as follows: Survey No. 46, certificate No. 158; survey No. 120, certificate No. 255; survey No. 122, certificate No. 256; survey No. 116, certificate No. 253; survey No. 62, certificate No. 166; survey No. 64, certificate No. 167; survey No. 166, certificate No. 168; survey No. 76, certificate No. 173; survey No. 162, certificate No. 21–363; survey No. 68, certificate No. 169, and survey No. 96, certificate No. 200.

The said surveys No-. 162, 122, 120, and 46 are patented to defendant as assignee of Frank Robinson, and said surveys No-. 66, 68, 76, 62, 96, 64, and 116 are patented to defendant as assignee of Maggie L. Rhomberg.

The plaintiff claims said surveys No-. *No.* 122, 68, 66, 64, 46, 120, and 62 as assignee of F. B. Jacobs, who made application to purchase same of date January 2, 1883, and claims said surveys

192 No-. *No.* 76, 162, 116, and 96 as assignee of Malinda Fisher, who made application to purchase same under date of January 8, 1883.

Are you the official custodian of the archives and records of the general land office of the State of Texas? If yea, you will please make out and duly certify full, accurate, and complete copies of all the papers, files, records, and of all endorsements made thereon, pertaining to the files of the said surveys of school lands purchased in the name of said Maggie L. Rhomberg and Frank Robinson, and in your answer to this *answer to this* interrogatory state whether you have attached to your answers such copies duly certified, and whether the same are full, accurate, and *and* complete copies of such documents and records, and you will designate the copy of each file by a number or letter, so as to identify the same. You will attach a seperate certificate to the copies of each file, with the seal of your office affixed.

Answer to Int. 2. I am. I attach hereto certified copies of all the papers, files, and all the endorsements thereon pertaining to surveys 62, 64, 66, 68, 76, 96, and 116, made for the common-school fund in Shackelford county by virtue of certificates Nos. 166, 167, 168,
193 169, 173, 200, and 253, issued to the Eastern Texas Railroad Company and purchased by Maggie L. Rhomberg from the State of Texas, and have marked the same "Exhibit- A, B, C, D, E, F, and G," in the order in which they are named, for identification. Said copies are full, accurate, and complete copies of the originals as they appear on file in this office.

I also attach hereto certified copies of all the papers, files, and all the endorsements thereon pertaining to sections Nos. 46, 120, 122, and 162, surveyed for the common-school fund by virtue of certificates Nos. 158, 255, 256, and 21-363, issued to the Eastern Texas Railroad Company and purchased by Frank Robinson from the State of Texas, and have marked the same "Exhibit- H, J, K, L, and M," in the order in which they are named, for identification. Said exhibits are full, accurate, and complete copies of the originals as they appear on file in this office.

Int. 3. You will examine the files in your office pertaining to the purchase of said sections or surveys of land in the names of F. B. Jacobs and Malinda Fisher, and if you find therein any protests or notices filed in behalf of said Maggie L. Rhomberg and Frank Robinson, or if you find any endorsements upon the wrap-
194 pers or papers of such files relating to the purchase of said lands by said Maggie L. Rhomberg and Frank Robinson, you will state the fact, and you will make out and attach to your answer duly certified copies of such notices and protests and of such endorsements, showing by your certificates, attested by your seal of office, that such copies are full, accurate, and complete copies of such notices, protests, and such endorsements as the same appear among the papers, files, and records of your office. You will make a seperate certificate to the copies of papers and endorsements in each file, and designate each by a number or letter for identification.

Answer to Int. 3. I find on file in this office in each of the files pertaining to sections 46, 62, 64, 66, 68, 120, and 122, surveyed for the common-school fund by virtue of certificates Nos. 158, 166, 167, 168, 169, 255, and 256, issued to the East Texas Railroad Company,

two protests or notices signed by J. A. Rhomberg, as attorney-in-fact for Frank Robinson and Maggie L. Rhomberg. Said sections were purchased from the State of Texas by F. B. Jacobs. I attach hereto certified copies of said protests or notices, and have marked the same "Exhibit- Nos. 1, 2, 3, 4, 5, 6, and 7," in the order in
195 which they are named, for identification. Said exhibits are full, accurate, and complete copies of the originals as they appear on file in this office.

I also hereto attach certified copies of the endorsements which appear on the file "wrappers" which cover said protests or notices in the order named above, and have marked the- "Exhibit- 8, 9, 10, 11, 12, 13, and 14," in the order named, for identification. Said exhibits are full, accurate, and complete copies of the original endorsements as they appear in this office.

Further I find on file in this office in each of the files pertaining to sections 76, 96, 116, and 162, surveyed for the common-school fund by virtue of certificates Nos. 173, 200, 253, and 21–363, issued to the Eastern Texas Railroad Company and purchased by Malinda Fisher, two protests or notices signed by J. A. Rhomberg, as attorney-in-fact of Maggie L. Rhomberg and Frank Robinson. I attach hereto certified copies of said protests or notices in the order named, and have marked same "Exhibit- Nos. 15, 16, 17, and 18," in the order in which they are named above, for identification.

I also hereto attach certified copies of the endorsements which appear on the "wrappers" which cover said protests or notices, and have marked the same "Exhibit- Nos. 19, 20, 21, and 22," in
196 the order named, for identification. Said "exhibits" are full, accurate, and complete copies of the original endorsements as they appear in this office.

Int. 4. Who is recognized in the general land office of the State of Texas, and by you as commissioner of the general land office, as the real purchaser and the real owner of each of said eleven sections of land? Who stands upon the books and records of the general land office as the purchaser and owner of the said lands? Who is shown by the records of the general land office to have been the first and oldest purchaser and applicant to purchase each of said sections of land? In answering this interrogatory please refer to the surveys by number.

Answer to Int. 4. It appears from the records of this office that Maggie L. Rhomberg and Frank Robinson were recognized by this office as the purchasers of said eleven sections of land from the State; that A. W. Becker, as the assignee of said Maggie L. Rhomberg and Frank Robinson, was the owner of said sections. I, as commissioner of the general land office, after investigation, find that Maggie L. Rhomberg and Frank Robinson were the first applicants for the purchase of said eleven sections, and therefore recognize them as the purchasers and A. W. Becker as the owner of said eleven sec-
197 tions of land. Said Maggie L. Rhomberg and Frank Robinson stand upon the books of this office as the purchasers of said land and A. W. Becker as their assignee. It is shown by the records of this office that Maggie L. Rhomberg and Frank Robin-

son were the first applicants for the purchase of said lands, said Maggie L. Rhomberg being the first applicant for sections 62, 64, 66, 68, 76, 96, and 116, and Frank Robinson being the first applicant for the purchase of sections 46, 120, 122, and 162.

Int. 5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer to int'y 5. I know nothing further of benefit or advantage to either party to this suit.

(Signed) R. M. HALL.

(The interrogatories are signed by "Robertson and Williams, solicitors for defendant.")

Sworn to and subscribed before me this — day of October, 1888.

[SEAL.] (Signed) R. C. SHELLEY,
Notary Public, Travis Co., Texas.

198 We hereby waive time, notice, and commission, and consent that the answers of the witness *to* be taken to the original, direct, and cross interrogatories before any officer authorized to take and return depositions under the laws of the State of Texas, waiving matters of mere form in taking and returning, but not waiving any matters of substance.

(Signed) LEAKE & HENRY,
Solicitors for Defendant.

THE STATE OF TEXAS, }
County of Travis. }

I, R. C. Shelley, a notary public in and for said county, do hereby certify that the foregoing answers of R. M. Hall, the witness before named, to the accompanying interrogatories propounded to him were made by said witness before me, and were sworn to and subscribed before me by said witness, R. M. Hall.

Given under my hand and seal of office this — day of October, 1888.

[SEAL.] (Signed) R. C. SHELLEY,
Notary Public, T. C., T.

199 EXHIBIT A.

Application for Purchase. No. —.

To the surveyor of land district, Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of An act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to

provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, I hereby apply to purchase the following land, to wit, being all of section No. 62, block —, in Shackelford county, about 5 miles north from center of said county, surveyed for Eastern Texas Railroad Co., certificate No. 166, beginning at N. E. cor. of sec. 61, in said block —, surveyed for Eastern Texas R. R. Company; thence west 1,900 vs., thence north 1,900 vs., thence east 1,900 vs., thence south 1,900 vs., to place of beginning, to contain 640 acres. Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full in the within application, the same being refused because of previous payments.

[SEAL.] F. R. LUBBOCK, *Treasurer*.

200 Jan'y 18, '83.—This — to certify that J. A. Rhomberg this day tendered the first one-twentieth payment in the within application, which was refused because of previous payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas.

Feb'y 23, 84.—This is to certify that J. A. Rhomberg has this day tendered int. on the within application, which is refused because of prior payment as above.

W. B. WORTHAM,
Act'g Treas.

Application for purchase made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, at page 47. H. C. Jacobs, surveyor.

No. 15602.

TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y* 17, '85.

Received of J. A. Rhomberg, on account of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being payment on 640 acres of section No. 62 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of land set apart for the benefit of the common-school fund, approved April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer*.

I. Feb'y 20, '85.

File 16979. School land. Maggie L. Rhomberg. Application & treas. rec'pt. Filed Feb'y 2d, '85. D. N. Robinson, ch'f clerk.

201 THE STATE OF TEXAS, }
District of Milam. }

Survey No. 62.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 166, issued by the commissioners of claims on the 19th day Aug., 1861.

Said survey is No. 62, in Shackelford county, situated on the waters of Hubbard's creek, a tributary of the Brazos river, about 7 miles N. 25 W. of Albany.

Beginning at a stone mound for the S. W. corner of this and the N. W. cor. of No. 61, thence north, at 80 vs. a branch 1,480 vs., Taylor's creek, 1,900 varas to a stone mound for the N. W. corner, from which a mesquite m'k'd H X b'rs N. 60 E. 79 vs.; thence east recrossing said creek, 1,900 vrs. to a stake for the N. E. corner and the N. W. cor. of No. 55; thence south 1,900 vs. to a stake for the S. E. cor. and the N. E. cor. of No. 61; thence west 1,900 vs.

Surveyed Sept. 3d, 1868.

S. B. JESTER,
Z. T. ROGERS,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in
202 Book B No. 2, page 62.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell District.

File 16979. Milam scrip. Field-notes, 640 acres, Eastern Tex. R. R. Co. Filed Nov. 10th, 1868. Covers F. B. Jacobs (F. 13012), otherwise correct on map of Shackelford county. June 29, '86. Herman Pressler. Patented July 2, '86. Byrne.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg & Jacob Rhomberg, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two ($132) dollars, to me in hand paid by John H. Klein, of the county of Dubuque, State

of Iowa, have this day granted, bargained, sold and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said John H. Klein all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of An act to provide for the sale of lands in organized counties, as surveyed by railroad companies, and other works of internal improvements, and set apart for the benefit of the common-school fund; to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of sections No. 62, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 166, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, his heirs and assigns forever; the said John H. Kleine assumes all future payments to be made thereon, and we, the said Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

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Witness our hands, at Dubuque, Iowa, this 28th day of Feb'y, A. D. 1885.

MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg and Jacob Rhomberg, to me well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantors herein, and they acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, this 28th day of February, 1885.

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[SEAL.] F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

Deed from Maggie L. & J. Rhomberg. Date, Feb'y 28, '85. Section 62, bl'k —, Shackelford county, State of Texas. Certificate No. 166.

3. File 16979. Shackelford Co. Maggie & J. Rhomberg to Jno. H. Kleine. Transfer. Filed June 28, 1886. D. N. Robinson, ch'f cl'k.

STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged such instrument to me to be her act and deed and she declared she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

F. G. BRAME,

[SEAL.] *Notary Public of Dubuque Co., State of Iowa.*

STATE OF IOWA, } ss:
County of Dubuque, }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five ($475) dollars to me in hand paid by Robert S. Hoglen, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Rob-
205 ert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroads companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith," approved April 6, 1881, and described as follows: All of section No. 62, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 166, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

Deed from John H. Kleine to Robert S. Hoglen. Date, March 13th, 1885. Sec. 62, bl'k —, Shackelford county, State of Texas. Certificate No. 166.

File 16979. Shackelford Co. S. L. Jno. H. Kleine to Robert S. Hoglen. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

206 STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands
207 in organized counties by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows:

All of sections No. 62, block —, in Shackelford county, Texas, surveyed for East Texas Railroad Co. by virtue of certificate No. 166, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuance of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, 1886.

ROBERT S. HOGLEN.

Deed from Rob't S. Hoglen to A. W. Becker. Date, April 28, '86. Section 62, bl'k —, Shackelford county, State of Texas. Certificate No. 166.

File 16979. Shackelford Co. S. L. Rob't S. Hoglen to A. W. Becker. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

STATE OF TEXAS, }
County of Travis, } ss:

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the
208 foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

J. M. THORNTON,
[SEAL.] *Notary Public in and for said Co.*

No. 44765. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June* 28, '86.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred eighty-two & $\frac{70}{100}$ dollars, the same being int. to June 28, 1886, and $608.00, full principal on note No. —, for —, dated ——, given by said —— —— on ac't of purchase of whole of section No. 62 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

W. B. WORTHAM,
Act'g Treasurer.

174 70, interest.
608 00, principal.

782 70, total.

F. June 28, '86.

209 File 16979. Shackelford Co. Treasurer's rec'pt. Final pay't. Maggie L. Rhomberg. Filed June 28, '86. D. M. Robinson, ch'f cl'k.

Wrapper. Shackelford Co., '86. File 16979. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 62. East T. R. R. Co. Certificates 166, bl'k —. See Milam's 975 for Co. section. Act April, 1881. See S. L. file 13012 for same land. Covers F. B. Jacobs (file 13012), otherwise correct on map of Shackelford county. June 29, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. July 1, '86. Byrne. Patented July 2,' 86. # 36, vol. 6. Byrne. M'k'd p't'd & reg.

GENERAL LAND OFFICE,
AUSTIN, TEX., *Sept. 27th,* 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 12 pages contain full, accurate, and complete copies of the following papes on file in and archives of this office, viz:

1. Application to purchase, with all endorsements thereon.

2. Treasurer's receipt for first payment, with all endorsements thereon.

3. Field-notes of survey No. 62, with all endorsements thereon.

4. Transfer from Maggie L. & J. Rhomberg to John H. Kleine, with all endorsements thereon.

210 5. Transfer from John H. Kleine to Robert S. Hoglen, with all endorsements thereon.

6. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.

7. Treasurer's receipt for final payment, with all endorsements thereon,

8. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix [SEAL.] the impress of the seal of said office the day and year last above written.

(Signed) R. M. HALL,
Commissioner.

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, & eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such land in unorganized counties, approved April 6, 1881, I
211 hereby apply to purchase the following land, to wit, being all of section No. 64, bl'k —, in Shackelford county, about 7 miles north from center of county, surveyed for Eastern Texas Railroad Company, certificate No. 167: Beginning at N. E. cor. of sec. 63, in said block, surveyed for said E. T. R. R. Co., thence west 1,900 vs., thence north 1,900 vs., thence east 1,900 vs., thence south 1,900 vs., to place of beginning, to contain 640 acres.

Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG. [SEAL.]

Jan'y 18, '83.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, which was refused because of prior payment.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treas.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has tendered int. payment on within application, which is refused because of prior payment, as above.

W. B. WORTHAM,
Ch'f Cl'k & Act'g T.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ (669.47) dollars, being interest and principal in full on the within application, which was refused because of previous payment.

212 F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, at page 47. H. C. Jacobs, surveyor. Fee, 1.00

No. 15603. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y 17th*, 1885.

Received of J. A. Rhomberg, on account of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 64 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

$32.00

I. Feb'y 20, '85.

File 16980. School land. Maggie L. Rhomberg. Application & treasury receipt. Filed Feb'y 20, '85. D. N. Robinson, ch'f cl'k.

213 THE STATE OF TEXAS, }
District of Milam. }

Survey No. 64.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 167, issued by the commissioner of claims on the 19 Aug., 1861.

Said survey is No. 64, in Shackelford county, situated on the waters of the Hubbard's creek, a tributary of the Brazos river, about 8½ miles N. 25 W. of Albany.

Beginning at a stake for the S. E. cor. and the N. E. cor. of No 63, thence west 1,900 vs. to a stone mound on the north bank of a deep branch for the S. W. cor. and N. W. cor. of No. 63; thence north 1,900 vs. to a stone mound for the N. W. corner; thence east 1,900 vs. to a stake for the N. E. corner and the N. W. corner of No. 53; thence south 1,900 vs. to the place of beginning.

Surveyed Sep. 3d, 1868.

S. B. JESTER,
Z. T. ROGERS,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell District.

214 I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plot and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 64.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell District.

File 16980. Milam scrip. Field-notes, 640 acres, Eastern Tex. R. R. Co. Filed Nov. 10, 1868. Covers F. B. Jacobs (F 13013), otherwise correct on map of Shackelford Co. June 29, '86. Herman Pressler. O. Patented July 2, '86. Byrne. C. C., Dec. 21, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg and Jacob Rhomberg, of the county of Dubuque, State of Iowa, for and in consideration of the sum of one hundred and thirty-two ($132) dollars to me in hand paid by John H. Kleine, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to
215 amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 64, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 167, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, his heirs and assigns forever. The said John H. Kleine assumes all future payments to be made thereon, and we, the said Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or

his heirs or assigns when said payments shall have been made according to law.

Witness our hand-, at Dubuque, Iowa, this 28th day of February, A. D. 1885.

(Signed) MAGGIE L. RHOMBERG.
[SEAL.] JACOB RHOMBERG.

STATE OF IOWA, }
County of Dubuque, } ss:

Before me, the undersigned authority, personally came and appeared Maggie L. Rhomberg and Jacob Rhomberg, to me
216 well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantors therein, and they acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, this 28th day of February, 1885.

[SEAL.] (Signed) F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

STATE OF IOWA, }
County of Dubuque, } ss:

Before me, the undersigned authority, this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband and, having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged such instrument to me to be her act and deed, and she declared that she had willingly signed the same for the purposes and considerations therein expressed and she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

[SEAL.] F. G. BRAME,
Notary Public of Dubuque Co., State of Iowa.

217 File 16980. Shackelford Co. S. L. Maggie L. Rhomberg to John H. Kleine. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Deed from Maggie L. and Jacob Rhomberg to John H. Kleine. Dated February 28th, 1885. Section 64, bl'k —, Shackelford county, State of Texas. Certificate 167.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five, $475, dollars to me in hand paid by Robert S. Hoglen, — all my right, title, interest, and claim in and

to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in con-
218 flict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 64, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 167, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand at Dubuque, Iowa, this 13th day of March, 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Du-
219 buque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

File 16980. Shackelford Co. S. L. John H. Kleine to Robert S. Hoglen. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k. Deed from John H. Kleine to Robert S. Hoglen. Dated March 13th, 1885. Section 64, bl'k —, Shackelford county, State of Texas. Certificate No. 167.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my

right, title, interest, and claim in and to the State school land hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the
220 sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 64, block —, in Shackelford county, Texas, surveyed for East. Texas Railroad Co. by virtue of certificate No. 167, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the
221 foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

Deed from Rob't S. Hoglen to A. W. Becker. Date, April 28, 1886. Section 64, bl'k —, Shackelford county, State of Texas. Certificate No. 167.

File 16980. Shackelford Co. S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

No. 47766. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June* 28, 1886.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the — seven hundred eighty-two & $\frac{70}{100}$ dollars, the same being int. to June 28, '86, and, $608.00 full principal on note No. —, for —, dated ——, given by said —— —— on account of purchase of whole of section No. 64 of State school lands in Shackelford county,

under an act to provide for the sale of the alternate sections
222 of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

W. B. WORTHAM,
Ch'f Clk, Act'g Treasurer.

$174 70, interest.
608 00, principal.

782 70, total.

I. July 28, '86.

File 16980. Shackelford Co. Treas. rec'pt. Final pay't. Maggie L. Rhomberg. Filed June 28, '86. D. N. Robinson, ch'f cl'k. Shackelford Co., '86. File 16980. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 64. Eastern T. R. R. Co. No. certificate, 167. See Milam S. 976 for Co. section. Act April, 1881. See S. L. file 13013 for same land. Covers F. B. Jacobs (F. 13013), otherwise correct on map, Shackelford county. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. July 1, '86. Robinson. P't'd July 2, '86. Byrne. No. 37, vol. 6. M'k'd p't'd & reg. M'g'l, 16980.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept. 27th*, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 11 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 64, with all endorsements thereon.
223 4. Transfer from Maggie L. Rhomberg & J. Rhomberg to John H. Kleine, with all endorsements thereon.
5. Transfer from John H. Kleine to Robert S. Hoglen, with all endorsements thereon.
6. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
7. Treasurer's receipt for final payment, with all endorsements thereon.
8. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT C.

Application for Purchase. No. —.

To the surveyor land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, I apply to purchase the following land, to wit, being
224 all of section No. 66, bl'k —, in Shackelford county, about 9 miles north from center of said county, surveyed for Eastern Texas Railroad Co., certificate No. 168: Beginning at N. E. cor. of sect. 65, in — surveyed for said E. T. R. R. Company, thence west 1,900 vs., thence north 1,900 vs., thence east 1,900 vs., thence south 1,900 vs. to place of beginning, to contain 640 acres.

Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG.

Jan'y 18, '82.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, which was refused because of prior payment.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. payment on the within application, refused because of prior payment as above.

W. B. WORTHAM, *Ch'f Cl'k.*

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full on the within application, which is refused because of previous payment.

F. R. LUBBOCK, *Treasurer.*

Application for purchase N-., made by Maggie L. Rhomberg. State of Tex., Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, page 47. H. C. Jacobs, surveyor.

225 No. 15604.

TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y* 17, '85.

Received of J. A. Rhomberg, on ac't of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 66 of State school lands in Shackelford county, under

"An act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881."

$32.00. F. R. LUBBOCK, *Treasurer.*

I. Feb'y 20, '85.

File 16981. School land. Maggie L. Rhomberg. Application and treas. receipt. Filed Feb'y 20, '85. D. N. Robinson, ch'f cl'k.

THE STATE OF TEXAS, }
District of Milam. }

Survey No. 66.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 168, issued by the commissioner of claims on the 19th Aug., 1861.

Said survey is No. 66, in Shackelford county, situated on the waters of the Brazos river, about 10 miles N. 20 N. of Albany.

Beginning at a stake in prairie for the S. E. corner and the N. E. corner of No. 65, thence north 1,900 vs. to a stone mound in prairie for the N. E. cor. of No. 51; thence west 1,900 vs. to a rock mound in prairie for the N. W. corner; thence south 1,900 vs. to a stake for the S. W. cor. and the N. W. cor. of No. 65; thence east 1,900 vs. to the place of beginning. Surveyed Sept. 3d, 1868.

S. B. JESTER,
Z. T. ROGERS,
Chain-Carriers.

226 I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 66.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell District.

File 16981. Milam scrip. Field-notes 640 acres, Eastern Tex. R. R. Co. Filed Nov. 10, 1868. Covers F. B. Jacobs (F. 13014), otherwise correct on map of Shackelford county. June 29, '86. Herman Pressler. P't'd July 2, '86. Byrne. C. C., Dec. 21st, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg and Jacob Rhomberg, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two, $132, dollars to me in hand paid by John H. Kleine, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, conveyed, and do by these presents grant, bargain, sell, and con-
227 vey, unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 66, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 168, and to contain 640 acres, the field-notes of which are on file in the general land office of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, — assumes all future payments to be made thereon; and we, the said Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness our hand-, at Dubuque, Iowa, this 28th day of February, A. D. 1885.

[SEAL.] MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

228 STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg & Jacob Rhomberg, to me well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantors therein, and they acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, this 28th day of February, 1885.

[SEAL.] F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, on this day personally appeared Maggie L. Rhomberg, wife of Jacob. Rhomberg, known to

me to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband and having the same explained to her, the said Maggie L. Rhomberg acknowledged such instrument to me to be her act and deed, and she declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

229 [SEAL.] F. G. BRAME,
Notary Public of Dubuque County, State of Iowa.

File 16981. Shackelford Co. S. L. Maggie L. & Jacob Rhomberg to John H. Kleine. Transfer. Filed June 26, '86. D. N. Robinson, ch'f cl'k.

Deed from Maggie L. & Jacob Rhomberg to John H. Kleine. Date, February 28, '85. Section 66, bl'k —, Shackelford county, State of Texas. Certificate No. 168.

STATE OF IOWA, }
County of Dubuque, }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five ($475) dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two,
230 three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroads companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 66, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 168, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } ss:

Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the fore-
231 going instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all purposes and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

File 16981. Shackelford Co. S. L. John H. Kleine to Robert S. Hoglen. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Deed from John H. Kleine to Robert S. Hoglen. Date, March 13, '85. Section 66, bl'k —, Shackelford county, State of Texas. No. certificate, 168.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions
232 of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 66, bl'k —, in Shackelford county, Texas, surveyed for East Texas Railroad Company by virtue of certificate No. 168, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } ss:

Before me, the undersigned authority, this day personally
233 came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28 day of April, 1886.

J. M. THORNTON,
Notary Public in and for said County.

File 16981. Shackelford Co. S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28th, 1886. Section 66, bl'k —, Shackelford county, State of Texas. Certificate No. 168.

No. 47767. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June* 28, 1886.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred eighty-two & $\frac{70}{100}$ dollars, the same being int. to June 28, '86, and $608.00, full principal, on note No. —, for —, dated ——, given by said —— —— on account of purchase
234 of whole of section No. 66 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of land set apart for the benefit of the common-school funds, approved April 6, 1881.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

$174 70, interest.
608 00, principal.

782 70, total.

I. June 28, '86.

File 16981. Shackelford Co. Treas. receipt final pay't. Maggie L. Rhomberg. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Shackelford Co., '86. File 16981. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 66, Eastern T. R. R. Co. No. certificate, 168. Bl'k —. See Milam S. 977 for Co. section. Act April 1, 1881. See S. L. file 13014 for same land. Covers F. B. Jacobs (F. 13014), otherwise correct on map of Shackelford county. June 28, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. July 1, '86. Robinson. Patented July 2, '86. Byrne. No. 38, vol. 6. M'k'd p't'd & reg. M'g'l 16981.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept.* 27, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 12 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 66, with all endorsements thereon.

235 4. Transfer from Maggie L. & J. Rhomberg to John H. Kleine, with all endorsements thereon.

5. Transfer from John H. Kleine to Robert S. Hoglen, with all endorsements thereon.
6. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
7. Treasurer's receipt for final payment, with all endorsements thereon.
8. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the impress of the seal of said office the day and year last above written.

(Signed) R. M. HALL,
Commissioner.

* * * * * * *

EXHIBIT D.

[On margin in pencil:] 16982 S.

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, & eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, I

236 hereby apply to purchase the following land, to wit, being all of section No. 68, bl'k —, in Shackelford county, about 11 miles north from center of said county, surveyed for Eastern Texas Railroad Co., certificate No. 169: Beginning at N. E. cor. of sec. 67, in said block surveyed for said E. T. R. R. Company, thence west 1,900 vs., thence north 1,900 vs., thence east 1,900 vs., thence south 1,900 vs. to place of beginning, to contain 640 acres.

Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG.

Jan'y 18, 1883.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, which was refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has tendered int. payment on within application, which is refused because of prior payment, as above.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for application, this day tendered the sum of six hundred and sixty-nine dollars & $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full on the within application, which is refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

237 Application for purchase No. —, made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, at page 47. H. C. Jacobs, surveyor.

TREASURER'S OFFICE, AUSTIN, TEXAS, *Feb'y 17th*, 1885.

Received of J. A. Rhomberg, on account of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 68 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer.*

I. Feb'y 20, '85.

File 16982. School land. Maggie L. Rhomberg. Application & treas. rec'pt. Filed Feb. 20, '85. D. N. Robinson, chief clerk.

THE STATE OF TEXAS, }
District of Milam, }

Survey No. 68.

Field-notes of a survey of 640 acres of land, made for the Eastern Texas Railroad Company by virtue of certificate No. 169, issued by the commissioners of claims on the 19th August, 1861.

238 Said survey is No. 68, in Shackelford county, situated on the waters of Hubbard's creek, a tributary of the Brazos river, about 12½ miles N. 12 W. of Albany. Beginning at a stake in prairie for the S. E. corner and the N. E. corner of No. 67, thence north 1,900 vs. to a stake in prairie for the N. E. corner and N. W. corner of No. 49; thence west 1,900 vs. to a stake in prairie for the N. W.

corner: thence south 1,900 vs. to a stake for the S. W. corner and the N. W. corner of No. 67; thence east 1,900 vs. to the place of beginning. Surveyed Sep. 3d, 1868.

S. B. JESTER,
Z. T. ROGERS,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 68.

Given under my hand, at Belton, this 4th day of November, 1868.

GEO. D. RICHARD,
District Surveyor, Bell Dist.

239 File 16982. Milam scrip. Field-notes, 640 acres. Eastern Tex. R. R. Co. Filed Nov. 10, 1868. Covers F. B. Jacobs (F. 13015), otherwise correct on map of Shackelford county. June 22, '86. Herman Pressler. Patented June 24, '86. Buckner. Repatented Jan'y 24, '87. Byrne. C. C., Dec. 21, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg and Jacob Rhomberg, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two dollars ($132) to me in hand paid by John H. Kleine, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed, and do by these presents bargain, sell, and convey, unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved
240 April 6, 1881, and described as follows: All of section No. 68, bl'k ---, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 169, and to contain 640 acres, the field-notes of which are on file in the general

land office of the State of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, his heirs and assigns forever. The said John H. Kleine assumes all future payments to be made thereon, and we, the said Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness our hand-, at Dubuque, Iowa, this 28th day of February, A. D. 1885.

MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg and Jacob Rhomberg, to me well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantor-therein, and they acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, this 28th day of February, 1885.

241 [SEAL.] F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, on this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged such instrument to me to be her act and deed, and she declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

[SEAL.] F. G. BRAME,
Notary Public of Dubuque Co., State of Iowa.

File 16982. Shackelford county school land. Maggie L. Rhomberg to John H. Kleine. Transfer. Filed Jan'y 21, '87. R. C. Shelley, ch'f cl'k.

Deed from Maggie L. & Jacob Rhomberg to John H. Kleine. Date, Feb'y 28, '85. Section 68, bl'k —. Shackelford county, State of Texas. Certificate No. 169.

242 STATE OF *Texas*, }
County of Dubuque. }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five, $475, dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 68, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 169, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to
243 hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Klein, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

File 16982. Shackelford county school land. John H. Kleine to R. S. Hoglen. Transfer. Filed Jan'y 21, 1887. R. C. Shelley, chief clerk.

244 Deed from John H. Kleine to Robert S. Hoglen. Date, M'ch 13th, 1885. Section 68, bl'k —, Shackelford county, State of Texas. Certificate No. 169.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized
245 counties, approved April 6, 1881," and described as follows:
All of section No. 68, bl'k —, in Shackelford county, Texas, surveyed for East Texas Railroad Co. by virtue of certificate No. 169, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

J. M. THORNTON,
[SEAL.] *Notary Public in & for said County.*

246 File 16982. Shackelford county school land. R. S. Hoglen to A. W. Becker. Transfer. Filed Jan'y 21, '87. R. C. Shelley, chief clerk.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 68, bl'k —, Shackelford county, State of Texas. Certificate No. 169.

No. 47720. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June 18th*, 1886.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred eighty-one $\frac{34}{100}$ dollars, the same being int. to June 18, '86, and $608.00, full principal on note —, for —, dated ——, given by said —— —— on account of purchase of whole of section No. 68 of school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

F. R. LUBBOCK, *Treasurer*.

$173 34, interest.
608 00, principal.

$781 34, total.

I. June 21, '86.

File 16982. Shackelford Co. Treas. rec'pt. Final paym't. Maggie L. Rhomberg. Filed June 21, '86. W. C. Walsh, com'r.
247 Shackelford Co., '86. File 16982. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 68. Eastern Tex. R. R. Co. No. certificate 169, bl'k —. See Milam's S. 978 for Co. sec. Act April, 1881. See S. L. file 13015 for same land. Covers F. B. Jacobs (F. 13015), otherwise correct on map of Shackelford county. June 22, '86. Herman Pressler. Correct for patenting. June 24, '86. Walsh. Patented June 24, '86. 26, vol. 6. Buckner. M'k'd & reg. M'g'l 16982.

[Written across face in red ink:] Patent No. 26, vol. 6, returned & cancelled on record in order that patent may issue to ass'ee, to whom transfers are on file in this office. Jan'y 22, 87. R. C. Shelley, ch'f cl'k.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept. 27th*, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 12 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 68, with all endorsements thereon.
4. Transfer from Maggie L. & J. Rhomberg to John H. Kleine, with all endorsements thereon.
5. Transfer from John H. Kleine to Robert S. Hoglen, with all endorsements thereon.
6. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
7. Treasurer's receipt for first payment, with all endorsements thereon.

8. Endorsements on file wrapper covering above papers.

248 In testimony whereof I have hereunto set my hand and affix- the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

* * * * * * *

"EXHIBIT E."

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such land in unorganized counties," approved April 6, 1881, I hereby apply to purchase the following land, to wit, being all of section No. 76, bl'k —, in Shackelford county, about 12 miles north from center of such county, surveyed for Eastern Texas Railroad Co., certificate No. 173: Beginning at S. E. cor. of sec. 75, in said block, surveyed for said E. T. R. R. Company, thence west 1,900 vs., thence south 1,900 vs., thence east 1,900 vs., thence north 1,900 vs., to place of beginning, to contain 640 acres.

249 Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG.

January 18, 1883.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, but the same was refused for reason of previous payment having already been made.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify J. A. Rhomberg has tendered int. payment on written application, which is refused — of prior payment, as above.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ (669.47) dollars, being interest and principal in full on the within application, which is refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, at page 47. H. C. Jacobs, surveyor.

No. 15606. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y 17th*, 1885.

Received of J. A. Rhomberg, on account of Maggie L. Rhom-
250 berg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 76 of State school lands in Shackelford county, under an act to provide for the sale of alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

$32.00 F. R. LUBBOCK, *Treasurer.*

I. Feb'y 20, '85.

File 16983. School lands. Maggie L. Rhomberg. Application and treas. rec'pt. Filed Feb'y 20, '85. D. N. Robinson, ch'f cl'k.

THE STATE OF TEXAS, }
District of Milam. }

Survey No. 76.

Field-notes of a survey of 640 acres of land, made for the Eastern Texas Railroad Company by virtue of certificate No. 173, issued by the commissioner of claims on the 19th Aug., 1861.

Survey is No. 76, in Shackelford county, situated on the waters of Hubbard's creek, a tributary of the Brazos river, about 14 miles N. 20 W. of Albany.

Beginning at a stake for the S. E. corner of No. 75 and the N. E. corner of this survey, thence west 1,900 vs. to a stake for the N. W. corner and the S. W. corner of No. 75., thence south 1,900 vs. to a stone mound for the S. W. corner, thence east 1,900 vs. to a stake for the S. E. corner and the S. W. corner of No. 69, thence north 1,900 vs. to the place of beginning.

Surveyed Sept. 3d, 1867.

WM. COLLIER,
HENRY SCOTT,
Chain-Carriers.

251 I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and *and* that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, Bell district, do hereby

certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 76.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell Dist.

File 16983. Milam scrip. Field-notes, 640 acres. Eastern Tex. R. R. Co. Filed Nov. 10, 1868. Covers M. Fisher (F. 13259), otherwise correct on map of Shackelford Co. June 29, '86. Herman Pressler. P't'd July 2, '86. Buckner. C. C., Dec. 21, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg and Jacob Rhomberg, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two ($132) dollars to me in hand paid by John H. Kleine, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed,
252 and do by these presents grant, bargain, sell, and convey, unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881," and described as follows: All of section No. 76, bl'k —, in Shackelford county, Texas, surveyed for the Eastern Texas Railroad Company by virtue of certificate No. 173, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, his heirs and assigns forever. The said John H. Kleine assumes all future payments to be made thereon, and we, the said Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or his heirs or his assigns when such payments shall have
253 been made according to law.

Witness our hands, at Dubuque, Iowa, this 28th day of February, A. D. 1885.

MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg & Jacob Rhomberg, to me well and

personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantors therein, and they acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand — official seal, at my office, at Dubuque, this 28th day of February, 1885.

[SEAL.] F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, on this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the foregoing instrument, and, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged such instrument to
254 me to be her act and deed, and she declared that she had willingly signed the same for the purposes and considerations therein expressed and that she did not wish to retract it.

Given under my hand and seal of office this day, 28th day of February, A. D. 1885.

[SEAL.] F. G. BRAME,
Notary Public of Dubuque Co., State of Iowa.

File 16983. Shackelford Co. S. L. Maggie L. & J. Rhomberg to Jno. H. Kleine. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Deed from Maggie L. & Jacob Rhomberg to John H. Kleine. Date, February 28th, 1885. Section 76, bl'k —, Shackelford county, State of Texas. Certificate 173.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five, $475, dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State
255 school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," — April 6, 1881, and

described as follows: All of section No. 76, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 173, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } *ss:*

256 Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, — 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

File 16983. Shackelford Co. S. L. John H. Kleine to Robert S. Hoglen. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k. Deed from John H. Kleine to Robert S. Hoglen. Date, M'ch 13, '85. Section 76, bl'k —, Shackelford county, State of Texas. Certificate No. 173.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W.

257 Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and provide for the sale of such

lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 76, bl'k —, in Shackelford county, Texas, surveyed for East Texas Railroad Co. by virtue of certificate No. 173, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas: to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the
258 said Robert S. Hoglen, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } ss:

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.]

J. M. THORNTON,
Notary Public in and for said County.

File 16983. Shackelford Co. S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed June 28, '86. D. N. Robinson, ch'f cl'k. Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 76, bl'k —, Shackelford county, State of Texas. Certificate No. 173.

259 No. 47721.

TREASURER'S OFFICE,
AUSTIN, TEXAS, *June* 18, '86.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred eighty-one & $\frac{34}{100}$ —, the sum being int. to June 18, '86, and $608.00, full principal on note for —, dated ——, given by said —— —— on account of purchase of whole of section No. 76 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school land, approved April 6, 1881.

F. R. LUBBOCK, *Treasurer.*

$173 34, interest.
608 00, principal.

$781 34, total.

I. June 28, '86.

File 16983. Shackelford Co. Treas. rec'pt. Final pay't. Maggie L. Rhomberg. Filed June 28, '86. D. N. Robinson, ch'f cl'k.

Shackelford Co., '86. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 76. Eastern Tex. R. R. Co. No. certificate, 173. See Milam S. 982 for Co. section. Act April, 1881. See S. L. file 13259 for same land. Covers M. Fisher (F. 13259), otherwise correct on map of Shackelford Co. June 29, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. July 1, '86. Robinson. P't'd July 2, '86. No. 39, vol. 6. Buckner. M'k'd p't'd & reg. M'g'l, 16983.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept. 27th*, 1888.

I, R. M. Hall, commissioner of the general land office, do
260 hereby certify that the foregoing 11 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 76, with all endorsements thereon.
4. Transfer from Maggie L. & J. Rhomberg to John H. Kleine, with all endorsements thereon.
5. Transfer from John H. Kleine to Robert S. Hoglen and all endorsements thereon.
6. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
7. Treasurer's receipt for final payment, with all endorsements thereon.
8. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix the impress of my official seal the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

261 EXHIBIT F.

Application for Purchase. No. —.

To the surveyor land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, I hereby apply to purchase the following land, to wit, being all of section No. 96, bl'k —, in Shackelford county, about 11 miles north from center of said county, surveyed for Eastern

Texas Railroad Co., certificate No. 200: Beginning at N. E. cor. of sec. 95, in said block surveyed for said E. T. R. R. Company, thence west 1,900 vs., thence north 1,900 vs., thence east 1,900 vs., thence south 1,900 vs. to place of beginning, to contain 640 acres.

Dated 25th day of Nov., 1882.

MAGGIE L. RHOMBERG. [SEAL.]

Jan'y 18, 1883.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, which was refused because of prior payment.

262 W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has tendered int. payment on within application, which is refused because of prior payment as above.

W. B. WORTHAM,
Ch'f Cl'k, Act'g Treas.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine $\frac{47}{100}$ (8669.47) dollars, being interest and principal in full on the within application, the same being refused because of prior payment.

F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, page 47. H. C. Jacobs, surveyor.

No. 15607. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y 17th*, '85.

Received of J. A. Rhomberg, on account of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 96 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved

263 April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer.*

I. Feb'y 20, '85.

File 16984. School land. Maggie L. Rhomberg. Application and treas. rec'pt. Filed Feb'y 20, '85. D. N. Robinson, ch'f cl'k.

THE STATE OF TEXAS, }
District of Milam. }

Survey No. 96.

Field-notes of a survey of 640 acres of land, made for the Eastern Texas Railroad Company by virtue of certificate No. 200, issued by the commissioner of claims on the 19th day of Aug., 1861.

Said survey is No. 96, in Shackelford county, situated on the waters of Clear Fork, a tributary of the Brazos river, about 13 miles N. 25 W. of Albany.

Beginning at a stake for the S. E. corner and the N. E. corner No. 95, thence north 1,900 vs. to a stake for the N. E. corner and the N. W. corner of No. 77; thence west 1,900 vs. to a stone mound for the N. W. corner, from which a mesquite b'rs N. 4° E., 3½ vs.; another, N. 44 E., 7 vs.; thence south 1,900 vs. to a stone mound for the S. W. corner and the N. W. corner of No. 95, from which a mesquite bears N. 62½ W., 12 vs.; another b'rs N. 9 W., 16 vs.; thence east 1,900 vs. to the place of beginning. Bearing m'k'd H.

Surveyed Sep. 4th, 1868.

WM. COLLIER,
HENRY SCOTT,
Chain-Carriers.

264 I, Wm. Armstrong, deputy surveyor, Bell district, do hereby certify the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell District.

I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 96.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell District.

File 16984. Milam scrip. Field-notes, 640 acres. Eastern Tex. R. R. Co. Filed Nov. 10, 1868. Covers Malinda Fisher's (F. 13260), otherwise correct on map of Shackelford —. June 22, '86. Herman Pressler. P't'd June 25, '86. Gaither. Repatented Jan'y 24, '87. Byrne. C. C., Dec. 18, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that we, Maggie L. Rhomberg & Jacob Rhomberg, of Dubuque county, State of Iowa, for and in

consideration of the sum of one hundred and thirty-two dollars (8132) to me in hand paid by John H. Kleine, of the county
265 of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, and to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 96, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 200, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said John H. Kleine, his heirs and assigns forever. The said John H. Kleine assumes all future payments to be made thereon; and we, the said
266 Maggie L. & Jacob Rhomberg, hereby authorize the issuing of patent to him or heirs or assigns when such payments shall have been made according to law.

Witness our hands, at Dubuque, this 28th day of Feb'y, 1885.

MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

STATE OF IOWA, } *ss:*
County of Dubuque, }

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg and Jacob Rhomberg, to me well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as grantors therein, and they acknowledged to & before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, this 28th day of February, 1885.

[SEAL.]

F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

STATE OF IOWA, } *ss:*
County of Dubuque, }

Before me, the undersigned authority, on this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the fore-
267 going instrument, and, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged

such instrument to me to be her act and *and and* deed and she declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

[SEAL.] F. G. BRAME,
Notary Public of Dubuque County, State of Iowa.

File 16984. Shackelford Co. school land. Maggie L. Rhomberg to John H. Kleine. Transfer. Filed Jan'y 21, '87. R. C. Shelly, chief clerk.

Deed from Maggie L. & Jacob Rhomberg to John H. Kleine. Date, Feb'y 28, '85. Section 96, bl'k —, Shackelford county, State of Texas. Certificate No. 200.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the
268 sum of four hundred and seventy-five ($475) dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 96, block —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 200, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said
269 Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, do hereby authorize the issuing of patent — or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came

and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

270 File 16984. Shackelford Co. school land. J. H. Kleine to R. S. Hoglen. Transfer. Filed Jan'y 21, '87. R. C. Shelley, chief clerk.

Deed from John H. Kleine to Robert S. Hoglen, dated March 17, '85. Section 96, bl'k —, Shackelford county, State of Texas. Certificate No. 200.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Rob't S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty (8640) dollars to me in hand paid — A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in
271 organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 96, bl'k —, in Shackelford county, Texas, surveyed for the Eastern Texas Railroad company by virtue of certificate No. 200, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said A. W. Becker, his heirs or assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, do hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } ss:

272 Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantors therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

File 16984. Shackelford county school land. R. S. Hoglen to A. W. Becker. Transfer. Filed Jan'y 21, '87. R. C. Shelley, chief clerk.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 96, bl'k —, Shackelford county, State of Texas. Certificate No. 200.

No. 47722. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June* 18, '86.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred eighty-one & $\frac{34}{100}$ dollars, the same
273 being int. to June 18, '86, and $608.00, full principal on note No. —, for —, dated ——, on account of purchase of whole of section No. 96 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

F. R. LUBBOCK, *Treasurer.*

$173 34, int.
608 00, principal.

781 34, total. I. June 20, '86.

File 16984. Shackelford county. Treas. rec'pt. Final payment. Maggie L. Rhomberg. Filed June 21, '86. W. C. Walsh, com'r.

Shackelford Co., '86. File 16984. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 96. East Tex. R. R. Co. No. certificate, 200, bl'k —. See Milam S. 992 for Co. sec. Act April, 1881. See S. L. file 13260 for same lands. Covers Malinda Fisher's (F. 13260), otherwise correct on map of Shackelford county. June 29, '86. Herman Pressler. Correct for patenting. June 24, '86. Walsh. P't'd June 24, '86. Gaither. 28, vol. —. M'k'd p't'd. M'g'l, 16984.

[Written across the face in red ink:] Patent No. 28, vol. 6, returned and cancelled on records in order that patent may issue to assignee to whom transfers are on file in this office Jan'y 22, '87. R. C. Shelley, chief clerk.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept.* 27, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 12 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

274 1. Application for purchase, with endorsements thereon.

2. Treasurer's receipt for first payment, with all endorsements thereon.

3. Field-notes of survey No. 96, with endorsements thereon.

4. Transfer from Maggie L. & J. Rhomberg to John H. Kline, with endorsements thereon.

5. Transfer from John H. Kline to Robert S. Hoglen, with endorsements thereon.

6. Transfer from Robert S. Hoglen to A. W. Becker, with endorsements thereon.

7. Treasurer's receipt for final payment, with all endorsements thereon.

8. Endorsements on file wrapper covering above papers.

In testimony whereof I have hereunto set my hand and affix- the impress of the seal of said office — day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT G.

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the
275 caption and sections one, two, three, four, five, six, seven, and eight of an — to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, I hereby apply to purchase the following land, to wit, being all of section No. 116, bl'k —, in Shackelford county, about 4 miles N. W. from center of said county, surveyed for Eastern Texas Railroad Co., certificate No. 252: Beginning at N. E. cor. of sec. 115, in said block, surveyed — E. T. R. R. Company, thence west 1,900 vs.; thence north 1,900 vs.; thence east 1,900 vs.; thence south 1,900 vs., to place of beginning, to contain 640 acres.

Dated 25th day of November, 1882.

MAGGIE L. RHOMBERG.

Jan'y 18, '83.—This is to certify that J. A. Rhomberg this day tendered first one-twentieth payment on within application, which was refused because of previous payment.

276 W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. payment on within application, which is refused because of prior payment as above.

W. B. W., *Chief Clerk.*

AUSTIN, TEXAS, *March* 18, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine and $\frac{47}{100}$, $669.47, dollars, being interest and principal in full on the within application, the same being refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Maggie L. Rhomberg. State of Texas, Shackelford county. Recorded the 25th day of Nov., 1882, in Book 2 for recording applications for purchase, at page 47. H. C. Jacobs, surveyor.

No. 15608. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y* 17, '85.

Received of J. A. Rhomberg, on account of Maggie L. Rhomberg, the sum of thirty-two dollars, the same being first payment on 640 acres of section No. 116 of State school lands in Shackelford
277 county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer.*

I. Feb'y 20, '85.

File 16985. School land. Maggie L. Rhomberg. Application and treas. rec'pt. Filed Feb'y 20, '85. D. N. Robinson, ch'f cl'k.

STATE OF TEXAS, }
District of Milam. }

Survey No. 116.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 253, issued by the commissioner of claims on the 18th November, 1861.

Said survey is No. 116, Shackelford county, situated on the waters of Clear Fork, a tributary of the Brazos river, about 8 miles N. 70 W. of Albany.

Beginning at a stone mound for the S. W. corner and the N. W. corner of No. 115, thence north, at 880 vs. crossed a branch running west, 1,900 vs. to a stone mound for the N. W. corner; thence east 1,900 vs. to a stake for the N. E. corner, another N. W. corner of No. 113; thence south 1,900 vs. to a stake for the S. E. and the S. W. of No. 113 and the N. E. of No. 115; thence west 1,900 vs. to the place of beginning. Bearings marked H. Surveyed September 5th, 1868.

WILLIAM COLLIER,
278 HENRY SCOTT,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor of Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richards, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 116.

Given under my hand, at Belton, this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor of Bell Dist.

File 16985. Milam scrip. Field-notes, 640 acres. Eastern Texas R. R. Co. Filed Nov. 10, 1868. Covers Malinda Fisher (F. 13261), otherwise correct on map of Shackelford county. June 22, '86. Herman Pressler. Patented June 28, '86. Byrne. C. C., Dec. 18, '68. Richardson.

STATE OF IOWA, }
County Dubuque. }

Know all men by these presents that we, Maggie L. and Jacob Rhomberg, of Dubuque county, State of Iowa, for and in
279 consideration of the sum of one hundred and thirty-two ($132) dollars to me in hand paid by John H. Kleine, of the county of Dubuque, State of Iowa, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey unto the said John H. Kleine all our right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section 116, bl'k —, Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 253, and to contain 640 acres,
the field-notes of which are on file in the general land office
280 of the State of Texas; to have and to hold all and singular the land above described unto the said John H. Kleine, his heirs and assigns forever. The said John H. Kleine assumes all future payments to be made thereon; and we, the said Maggie L. and Jacob Rhomberg, hereby authorize the issuing of patent to him, his heirs or his assigns, when such payments shall have been made according to law.

Witness our hands, at Dubuque, Iowa, this 28th day of February, A. D. 1885.

MAGGIE L. RHOMBERG.
JACOB RHOMBERG.

STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, this day personally came and appeared Maggie L. Rhomberg and Jacob Rhomberg, to me well and personally known to be the identical persons whose names are subscribed to the foregoing instrument of writing as the grantors therein, and the- acknowledged to and before me that they executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, a- Dubuque, this 28th day of February, 1885.

[SEAL.]

F. G. BRAME,
Notary Public of Iowa in and for Dubuque Co.

281 STATE OF IOWA, } ss:
County of Dubuque, }

Before me, the undersigned authority, on this day personally appeared Maggie L. Rhomberg, wife of Jacob Rhomberg, known to me to be the person whose name is subscribed to the foregoing instrument; and, having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said Maggie L. Rhomberg, acknowledged such instrument to me to be her act and deed, and she declared that she had willingly signed the same for the purposes and considerations therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of February, A. D. 1885.

[SEAL.]

F. G. BRAME,
Notary Public of Dubuque, State of Iowa.

Deed from Maggie L. & Jacob Rhomberg to John H. Kleine. Date, Feb'y 28th, 1885. Section 116, bl'k —, Shackelford county, State of Texas. Certificate No. 253.

File 16985. Shackelford county school land. Maggie L. Rhomberg to John H. Kleine. Transfer. Filed June 16, '86. D. N. Robinson, ch'f clerk.

282 STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, John H. Kleine, of Dubuque county, State of Iowa, for and in consideration of the sum of four hundred and seventy-five ($475) dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State

school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight — to provide for the sale of lands in organized counties as surveyed by the railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881, and described as follows:

All of section No. 116, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certifi-
283 cate No. 253, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns. The — Robert S. Hoglen assumes all future payments to be made thereon, and I, the said John H. Kleine, hereby authorize the issuing of patent to him, his heirs or assigns, when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 13th day of March, A. D. 1885.

JOHN H. KLEINE.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared John H. Kleine, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 13th day of March, 1885.

[SEAL.] F. G. BRAME,
Notary Public in and for said County.

Deed from John H. Kleine to Robert S. Hoglen. Date, March 13, '85. Section 116, Shackelford county, State of Texas. Certificate No. 253.

284 File 16985. Shackelford county school land. John H. Kleine to Robert S. Hoglen. Transfer. Filed June 16, '86. D. N. Robinson, chief cl'k.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of Cook county, State of Illinois, have this day granted, bargained,

sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school land hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to
285 repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 116, bl'k —, Shackelford county, Texas, surveyed for Eastern Texas Railroad Co. by virtue of certificate No. 253, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him, his heirs or assigns, when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, } *ss:*
County of Travis, }

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical persons whose names *are* subscribed to the foregoing instrument of writing as grantor therein, and he
286 acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 116, Shackelford county, State of Texas. Certificate No. 253.

File 16985. Shackelford county school land. R. S. Hoglen to A. W. Becker. Transfer. Filed June 16, '86. D. N. Robinson, ch'f cl'k.

No. 47714. TREASURER'S OFFICE,
AUSTIN, TEXAS, *June 16th*, 1886.

Received of A. W. Becker, on account of Maggie L. Rhomberg, the sum of seven hundred and eighty-one & $\frac{7}{100}$ dollars, the same being int. to June 16, '86, and $608.00, full principal on note No. —, for —,

dated ——, given by said —— —— on account of purchase of whole of section No. 116 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of land set apart for the benefit of the common-school fund, approved April 6, 1881.

F. R. LUBBOCK, *Treasurer.*

$173 07, interest.
608 00, principal.

781 07, total. I. June 21, '86.

287 File 16985. Shackelford county. Treas. rec'pt. Final pay't. Maggie L. Rhomberg. Filed June 21, '86. W. C. Walsh, com'r.

Shackelford county, '86. File 16985. Shackelford county school land. Maggie L. Rhomberg. 640 acres, section No. 116. Eastern T. R. R. Co. No. certificate, 253. See Mil. S. 1002 fo- Co. sec. Act April, 1881. See S. L. file 13261 for same land. Covers Malinda Fisher (file 13261), otherwise correct on map of Shackelford Co. June 22, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. June 25, '86. Robinson. P't'd June 28, '86. No. 29, vol. 6. Byrne. M'k'd p't'd & reg. M'g'l 16985.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept.* 27, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 11 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 116, with all endorsements thereon.
4. Transfer from Maggie L. Rhomberg to John H. Kleine, with all endorsements thereon.

288 5. Transfer from John H. Kleine to Robert S. Hoglen, with all endorsements thereon.

6. Transfer from Rob't S. Hoglen to A. W. Becker, with all endorsements thereon.
7. Treasurer's receipt for final payment, with all endorsements thereon.
8. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix the impress of the seal of this office the day and year last above written.

[SEAL.] R. M. HALL,
Commissioner.

EXHIBIT H.

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6,
289 1881," I hereby apply to purchase the following land, to wit, being all of section No. 46, in block —, in Shackelford county, about 14 miles north from center of said county, surveyed for Eastern Texas Railroad Company, certificate No. 158: Beginning at S. E. corner of section 45, in said block, surveyed for said E. T. R. R. Company, thence west 1,900 vs.; thence south 1,900 vs.; thence east 1,900 vs.; thence north 1,900 vs. to place of beginning.

Dated 25th day of Nov., 1882.

FRANK ROBINSON.

Jan'y 18th, 1882.—This is to certify that J. A. Rhomberg this — tendered first one-twentieth *first* payment, which was refused because of prior payment on the land described in the within application.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. payment on the within application, but is refused because of prior payment as above.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treas.

AUSTIN, TEXAS, *March* 1, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ (8669.47) dollars, being interest and principal in full on the within ap-
290 plication, which is refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Frank Robinson. State of Texas, Shackelford Co. Recorded the 25th day of Nov., 1882, in Book No. 2 for recording application- for purchase, at page 45. H. C. Jacobs, surveyor.

No. 937. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y 23d*, 1885.

Received of J. A. Rhomberg, on account of Frank Robinson, the

sum of thirty-two dollars, the same being first payment on all of section No. 46 of State school land in Shackelford county, under an act to provide for the sale of alternate sections of land set apart for the benefit of the common-school fund, approved April 6, 1881.
$32.00. F. R. LUBBOCK, *Treasurer.*

I. Feb'y 25, '85.

File 16986. School land. Frank Robinson. Application and treas. rec'pt. Filed Feb'y 25, 1885. D. N. Robinson, ch'f clerk.

STATE OF TEXAS, }
District of Milam. }

Survey No. 46.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of — No. 158, issued
291 by the commissioner of claims on the 19th Aug., 1861.

Said survey is No. 46, in Shackelford county, situated on the waters of Hubbard's creek, a tributary of the Brazos river, about 15 miles N. 10 W. of Albany.

Beginning at a stone mound for the N. E. corner and the S. E. corner of No. 45, thence west 1,900 vs. to a stone mound for the N. W. corner and the S. W. corner of No. 45; thence south, crossing a branch, 1,900 vs. to a stone mound, from which a mesquite marked $\overset{x}{H}$ brs. N. 80 27 vrs., another marked R. R. brs. N. 51 E. 27 vrs., another m'k'd H. C. brs. N. 1 E. 27 vrs.; thence east, crossing branches at 500 vrs. and at 1,060 vrs., 1,900 vs. to a stake for the S. E. cor., from which a mesquite m'k'd $\overset{x}{H}$ brs. N. 29 W. 19 vrs.; thence north 1,900 vrs. to the place of beginning. Surveyed Sep. 3d, 1868.

WM. COLLIER,
HENRY SCOTT,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, do hereby certify that
292 I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 46.

Given under my hand, at Belton, this 4th day of November, 1868.

GEO. D. RICHARD,
District Surveyor, Bell Dist.

File 16986. Milam scrip. Field-notes, 640 acres. Eastern Tex. R. R. Co. Filed Nov. 19, 1868. Covers F. B. Jacobs (F. 13011); otherwise correct on map of Shackelford county. May 21, '86. Herman Pressler. Patented May 27, '86. Buckner.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, Frank Robinson, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two dollars, $132, to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all the right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad com-
293 panies and other works of internal improvements — set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of sections No. 46, bl'k —, in Shackelford county, Texas, surveyed for the Eastern Texas Railroad Company by virtue of certificate No. 158, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all the future payments to be made thereon, and I, the said Frank Robinson, hereby authorize the issuing of patent — or his heirs or assigns when such payment shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 5th day of March, A. D. 1885.

FRANK ROBINSON.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Frank Robinson, to me well and personally
294 known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 5th day of March, 1885.

[SEAL.] B. W. LACY,
Notary Public in and for said County.

Deed from Frank Robinson to Robert S. Hoglen. Date, March 5, 1885. Section 46, bl'k —, Shackelford county, State of Texas. Certificate No. 158.

Filed 16986. Shackelford Co. S. L. Frank Robinson to Robert S. Hoglen. Transfer. Filed May 22, '86. D. N. Robinson, ch't cl'k.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant,
295 bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 46, bl'k —, in Shackelford county, Texas, surveyed for East Texas Railroad Co. by virtue of certificate No. 158, and to contain 640 acres, the field-notes of which are on file in the general land office, State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns, forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him, his heirs or assigns, when such payments shall have been made according to law.

296 Witness my hand, at Austin, Texas, this the 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 46, bl'k —, Shackelford county, State of Texas. Certificate No. 158.

File 16986. Shackelford county S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed May 22, '86. D. N. Robinson, ch'f cl'k.

297 No. 46933. TREASURER'S OFFICE,
AUSTIN, *May 18th*, 1886.

Received of A. W. Becker, on account of Frank Robinson, the sum of seven hundred seventy-seven & $\frac{29}{100}$ dollars, the same being int. to May 18, 1886, and $608.00, full principal on note No. —, of —, given by said —— —— on account of purchase of whole of section No. 46 of State school lands in Shackelford county, under an act to provide for the sale of alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Int.	$169 29
Princ.	608 00
Total	$777 29

I. May 19, '86.

Shackelford Co., '85. File 16986. Shackelford county school land. Frank Robinson. 640 acres, section No. 46. E. T. R. R. Co. No. certificate, 158; bl'k —. See Mil. S. 967 for Co. sec. Act April, 1881. See file 13011 for same land. Covers F. B. Jacobs (F. 13011), otherwise correct on map of Shackelford Co. May 21, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. May 21, '86. Walsh. Pat'd May 22, '86. 615, vol. 35. M'k'd pat'd & reg. Buckner. M'g'l 16986.

File 16986. Shackelford Co. Treas. rec'pt. Final pay't. Frank Robinson. Filed May 19, '86. W. C. Walsh, com'r.

298 GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept.* 22, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing eight (8) pages contain a full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 46, with all endorsements thereon.
4. Transfer from Frank Robinson to Robert S. Hoglen, with all endorsements thereon.
5. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
6. Treasurer's receipt for final payment, with all endorsements thereon.
7. Endorsements on file wrapper covering above papers.

In testimony whereof I have hereunto set my hand and affix the impress *the impress* of the seal of said office the day and year last above written.

[SEAL.] R. M. HALL,
Commissioner.

299 EXHIBIT I.

Application to Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," I hereby apply to purchase the following land, to wit, being all of section 120, bl'k —, in Shackelford county, about 7 miles N. W. from center of said county, surveyed for the Eastern Texas Railroad Company, certificate No. 255: Beginning at N. E. corner of sec. 119, in said bl'k, surveyed for said E. T. R. R. Co., thence west 1,900 vs.; thence north 1,900 vs.; thence east 1,900 vs.; thence west 1,900 vs. to the place of beginning, to contain 640 acres.

Dated 25th day of November, 1882.

FRANK ROBINSON.

300 Jan'y 18, 1883.—This is to certify that J. A. Rhomberg this day tendered first one-twentieth payment on the within application, which was refused because of prior payments.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered payment on the within application, which is refused because of prior payment as above.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full on the within application, which is refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

Application for purchase No.—, made by Frank Robinson. State of Texas, Shackelford county. Recorded 25th Nov., 1882, in Book 2 for recording applications for purchase, on page 45. H. C. Jacobs, surveyor.

No. 938. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y* 23, 1885.

Received of J. A. Rhomberg, on account of Frank Robinson, the sum of thirty-two dollars, same being first payment on all of section No. 120 of State school land, Shackelford county, under an act to provide for the sale of alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

301 $32.00. F. R. LUBBOCK, *Treasurer.*

And ch. 104, sec. 7, act April 14, 1883. I. Feb'y 25, '85.

File 16987. School lands. Frank Robinson. Application and treas. rec'pt. Filed Feb. 25, '85. D. N. Robinson, ch'f clerk.

STATE OF TEXAS, }
District of Milam. }

Survey No. 120.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 255, issued by the commissioner of claims, 1861.

Said survey is No. 120, in Shackelford county, situated on the waters of Clear Fork, a tributary of the Brazos river, about 11 miles N. 40 W. of Albany.

Beginning at a stone mound for the S. E. cor. and the N. E. corner of No. 119, thence north 1,900 vs. to stone mound for the N. E. and the N. W. corner of 109; thence west, at 100 vs. across a branch, at 1,900 vs. to a stone mound on the north side of the branch for the N. W. cor.; thence south 1,900 vs. to a stone mound for the S. W. corner and the N. W. corner of No. 119, from which a mesquite b'rs south 141 vrs., another b'rs S. 73 W. 63 vs.; thence east
302 across a branch at 700 vs., 1,300 vs., and 1,800 vs. at 1,900 vs. at place of beginning. Bearings marked II. Surveyed Sept. 5th, 1868.

WILLIAM COLLIER,
HENRY SCOTT,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell dist., do hereby certify that the foregoing was made according to law, and that the limits, boundaries, corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richards, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 120.

Given under my hand, at Belton, this 4th Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell Dist.

File 16987. Milam scrip. Field-notes, 640 acres. Eastern Texas R. R. Co. Filed Nov. 10, 1868. Covers F. B. Jacobs (F. 13016), otherwise correct on map of Shackelford county. Herman Pressler. Patented May 27, '86. Buckner. C. C., Dec., 1868. Richardson.

303 STATE OF IOWA, }
County of Dubuque, }

Know all men by these presents that I, Frank Robinson, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two dollars, $132, to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school land hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section 120, bl'k —, in Shackelford county, surveyed for Eastern Texas Railroad Co. by virtue of certificate No. 255, to con-
304 tain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said Frank Robinson, do hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this 5th day of March, A. D. 1885.

FRANK ROBINSON.

STATE OF IOWA, }
County of Dubuque, } *ss:*

Before me, the undersigned authority, this day personally came and appeared Frank Robinson, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he had executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, a Dubuque, Iowa, this 5th day of March, 1885.

[SEAL.] B. W. LACY,
Notary Public in and for said County.

305 Deed from Frank Robinson to Robert S. Hoglen. Date, March 5, '85. Sec. 120, bl'k —, Shackelford county, State of Texas. Certificate No. 255.

File 16987. Shackelford Co. S. L. Frank Robinson to Robert S. Hoglen. Transfer. Filed May 24, '86. D. N. Robinson, ch'f clerk.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the captions — one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties and surveyed by railroad companies and other works of in-
306 ternal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section 120, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Co. by virtue of certificate No. 255, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him, his heirs or assigns, when such payments shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, } *ss:*
County of Travis, }

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally
307 known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 120, bl'k —, Shackelford county, State of Texas. Certificate No. 255.

File 16987. Shackelford Co. S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed May 24, 1886. D. N. Robinson, ch'f cl'k.

No. 46949.

TREASURER'S OFFICE,
AUSTIN, TEXAS, *May* 21, 1886.

Received of A. W. Becker, on account of Frank Robinson, the sum of seven hundred and seventy-seven and $\frac{7}{100}$ dollars, the same being int. to May 21, '86, and $608.00, full principal, on note for —, date ——, given by said —— —— on account of purchase of *of* whole of section 120 of State school land in Shackelford county,
308 under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

F. R. LUBBOCK, *Treasurer.*

169 70, int.
608 00, prin.

777 70, total. I. May 27, '86.

File 16987. Shackelford Co. Treas. rec'pt. Final pay't. Frank Robinson. Filed May 22, '86. W. C. Walsh, com'r.

Shackelford county, '85. File 16987. Shackelford county school lands. Frank Robinson. 640 acres, section No. 120. E. T. R. R. Co. No. certificate, 255. See Mil. S. 1004 for Co. sec. Act April, 1881. See file 13016 for same land. Covers F. B. Jacobs (F. 13016), otherwise correct on map of Shackelford county. May 24, '86. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. May 27, '86. Walsh. P't'd May 27, '86. 626, vol. 5. Buckner. M'k'd p't'd & reg. M'g'l, 16987.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sept.* 27, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 8 pages contain full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application for purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
309 3. Field-notes of survey No. 120, with all endorsements thereon.
4. Transfer from Frank Robinson to Robert S. Hoglen, with all endorsements thereon.

5. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.

6. Treasurer's receipt for final payment, with all endorsements thereon.

7. Endorsements on file wrapper covering above papers.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said office the day and year last above written.

[SEAL.] R. M. HALL,
Commissioner.

* * * * * * *

EXHIBIT K.

Application for Purchase. No. —.

To the surveyor of land dist., Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by the railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal
310 all laws in conflict therewith," approved July 8, 1879, and to provide for the sale of such land in organized counties, approved April 6, 1881," I hereby apply for purchase of the following lands, to wit, being all of section No. 122, bl'k —, in Shackelford county, about 9 miles N. W. from the center of said county, surveyed for Eastern Texas Railroad Company, certificate No. 256: Beginning at N. E. corner of section 121, in said bl'k surveyed for said E. T. R. R. Company, thence west 1,900 vs.; thence north 1,900 vrs.; thence east 1,900 vs.; thence south 1,900 vs. to place of beginning, to contain 640 acres.

Dated 26th day of November, 1882.

FRANK ROBINSON.

Jan'y 18, 1883.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on the within application, which was refused because of prior payment.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg — int. payment on the within application, which is refused because of prior payment, as above.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

AUSTIN, TEXAS, *March* 18, 1884.

311 This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine

$\frac{47}{100}$ (669.47) dollars, being interest and principal in full on the within application, which is refused because of prior payment.

[SEAL.] F. R. LUBBOCK, *Treasurer.*

Application for purchase No. —, made by Frank Robinson. State of Texas, Shackelford Co. Recorded 25th day of Nov., 1882, in Book 2 for recording applications for purchases, at page 47. H. C. Jacobs, surveyors.

No. 940. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y* 23, 1885.

Received of J. A. Rhomberg, on account of Frank Robinson, the sum of thirty-two dollars, the same being first payment on all of section No. 122 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of common-school fund, approved April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer.*

And ch. 104, sec. 7, ac. Ap'l 14, 1883. I. Feb'y 25, '85.

File 16988. School land. Frank Robinson. Application and treas. rec'pt. Filed Feb'y 25, '85. D. N. Robinson, ch'f cl'k.

312 STATE OF TEXAS, }
District of Milam. }

Survey No. 122.

Field-notes of a survey of 640 acres of land made for the Eastern Texas Railroad Company by virtue of certificate No. 256, issued by the commissioner of claims on the 18th of November, 1861.

Said survey is No. 122, in Shackelford county, situated on the waters of Clear Fork, a tributary of the Brazos river, about 12 miles N. 35 W. of Albany.

Beginning at a stake for the S. E. corner and the N. E. corner of No. 121, thence north 1,900 vs. to a stake for the N. E. corner and the N. W. corner of 107; thence west 1,900 vs. to a stone mound for the N. W. corner, from which a mesquite marked R. R. bears S. 73 W. 72 vs., another marked H. C. b'rs S. 6 E. 92 vs.; thence south 920 vs. across a branch 1,900 vs. to a stone mound for the S. W. corner and the N. W. corner of No. 121, from which a mesquite marked R. R. b'rs S. 61½ W. 74 vs., another marked H. C. b'rs N. 53 W. 97; thence east 1,900 vs. to the place of beginning.

Surveyed Sept. 5, 1868.

WM. COLLIER,
HENRY SCOTT,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor for Bell district, do hereby

certify that the foregoing survey was made according to law,
313 and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Bell Dist.

I, Geo. D. Richard, district surveyor, Bell district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 2, page 122.

Given under my hand this 4th day of Nov., 1868.

GEO. D. RICHARD,
District Surveyor, Bell District.

File 16988. Milam scrip. Field-notes, 640 acres. Eastern Texas R. R. Co. Filed Nov. 10, 1868. Correct on map of Shackelford county. June 5, '86. Herman Pressler. Patented June 11, '86. P. M. Curey. C. C., Dec. 18, '68. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that —, Frank Robinson, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two ($132) dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these
314 presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved April 6, 1881," and described as follows: All of section No. 122, *book* —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by virtue of certificate No. 256, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said Frank Robinson, hereby authorize the issu-
315 ing of patent to him or his heirs or assigns when such payments have been made in accordance with law.

Witness my hand, at Dubuque, Iowa, this 5th day of March, A. D. 1885.

FRANK ROBINSON.

STATE OF IOWA, }
Dubuque County, } ss:

Before me, the undersigned authority, this day personally came and appeared Frank Robinson, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all the uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this 5th day of March, 1885.

[SEAL.] B. W. LACY,
Notary Public in and for said County.

File 16988. Shackelford Co. S. L. Frank Robinson to Rob't S. Hoglen. Transfer. File- May 26, '86. D. N. Robinson, ch'f clerk.

Deed from Frank Robinson to Robert S. Hoglen. Date, March 5, '85. Section 122, bl'k —, Shackelford Co., State of Texas. Certificate No. 256.

316 STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest, and claim in the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvements and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 122, bl'k —, in Shackelford county, Texas, surveyed for Eastern Texas Railroad
317 Co. by virtue of certificate No. 266, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent to him, his heirs and assigns, when such payment shall have been made according to law.

Witness my hand, at Austin, Texas, this 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } ss:

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

318 File 16988. Shackelford Co. S. L. Robert S. Hoglen to A. W. Becker. Transfer. Filed May 26, '86. D. N. Robinson, ch'f cl'k.

Deed from Robert S. Hoglen to A. W. Becker. Date, April 28, '86. Section 122, bl'k —, Shackelford Co., State of Texas. Certificate No. 256.

No. 46950. TREASURER'S OFFICE,
AUSTIN, TEXAS, *May* 21, 1886.

Received of A. W. Becker, on account of Frank Robinson, the sum of seven hundred and seventy-seven & $\frac{70}{100}$ dollars, this sum being int. to 21st May, 1886, and $608.00, full principal on note No. —, for ——, dated ——, given by said —— —— on account of purchase of whole of section No. 122 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of land set apart for the benefit of the common-school fund.

Approved April 6, 1881.

F. R. LUBBOCK, *Treasurer.*

$169 70, int.
608 00, prin.

$777 70.

I. May 28, '86.

319 File 16988. Shackelford Co. Treas. rec'pt. Final pay't Frank Robinson. Filed May 28, '86. W. C. Walsh, com'r.

Shackelford county. File 16988. Shackelford county school land. Frank Robinson. 640 acres, section No. 122. E. T. R. R. Co. No. certificate, 256, bl'k —. See Milam S. 1005 for Co. sec. Act April, 1881. See file 13017 for same land. Correct on map of Shackelford county. June 5, 1886. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. June 9, '86. Robinson. P't'd June 11, '86. P. M. Cuney. 10, vol. 6. M'k'd pat'd and reg. M'g'l, 16988.

GENERAL LAND OFFICE, AUSTIN, TEXAS, *Sep.* 27, 1888.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 8 pages contain full, accurate, and com-

plete copies of the following papers in and archives of this office, viz:

1. Application for purchase, with endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 122, with all endorsements thereon.
4. Transfer from Frank Robinson to Robert O. Hoglen, with all endorsements thereon.

320 5. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.

6. Treasurer's receipt for final payment, with all endorsements thereon.
7. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

* * * * * * *

EXHIBIT L.

Application for Purchase. No. —.

To the surveyor of Shackelford county, Texas:

In accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6,

321 1881, I hereby apply to purchase the following land, to wit, being all of section No. 162, bl'k —, in Shackelford county, about 10 miles N. W. from center of said county, surveyed for eastern Texas Railroad Company, certificate No. 21–363: Beginning at S. E. corner sec. 161, in said bl'k, surveyed for said E. T. R. R. Co., thence west 1,900 vs.; thence south 1,900 vs.; thence east 1,900 vs.; thence north 1,900 vs., to place of beginning, to contain 640 acres.

Dated 25th day of Nov., 1882.

FRANK ROBINSON.

Jan'y 18th, 1883.—This is to certify that J. A. Rhomberg this day tendered the first one-twentieth payment on within application, which payment was refused because of payment having been previously made.

W. B. WORTHAM,
Ch'f Cl'k & Act'g Treasurer.

Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day

tendered int. payment on the within application, which is refused because of prior payment as above.

W. B. WORTHAM,
Ch'f Clk, Treasurer.

AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full on the within application, which is refused because of prior payment.

F. R. LUBBOCK, *Treasurer.*

322 Application for purchase No. —, made — Frank Robinson. State of Texas, Shackelford county. Recorded 25th day of November, 1882, in Book 2 for recording applications for purchase, at page 45. H. C. Jacobs, surveyor.

No. 936. TREASURER'S OFFICE,
AUSTIN, TEXAS, *Feb'y 23*, 1885.

Received of J. A. Rhomberg, on account of Frank Robinson, the sum of thirty-two dollars, the same being first payment on all of section No. 162 of State school lands in Shackelford county, under an act to provide for the sale of the alternate sections of lands set apart for the benefit of the common-school fund, approved April 6, 1881.

$32.00. F. R. LUBBOCK, *Treasurer.*

And ch. 104, sec. 7, act April 14, 1882. I. Feb'y 25, '85.

File 16989. School land. Frank Robinson. Application and treas. receipt. Filed Feb'y 25, '85. D. N. Robinson, chief clerk.

STATE OF TEXAS, }
District of Milam. }

Survey No. 162, *Bl'ks* —.

Field-notes of a survey of 640 acres of land, made for the Eastern Texas Railroad Company by virtue of certificate No. 21–363,
323 issued by the commissioner of the general land office Nov. 14, 1863.

Said survey is No. 162, in Shackelford county, situated on the waters of Clear Fork, a tributary of the Brazos river, about 13½ miles N. 50 W. of Albany.

Beginning at a stake for the N. E. corner and the S. E. corner of 161, thence west 1,900 vs. to a stake for the N. W. corner and the S. W. corner of No. 161; thence south 1,900 vs. to a stake for the S. W. corner; thence east 1,900 vs. to a stake for the S. E. corner and S. W. corner of No. 149; thence north 1,900 vs. to the place of beginning.

Surveyed July 24, 1868.

W. A. KELLAN,
WM. COLLIER,
Chain-Carriers.

I, Wm. Armstrong, deputy surveyor of Milam district, do hereby certify that the foregoing survey was made according to law, and that the limits, boundaries, and corners, with the marks, natural and artificial, are truly described in the foregoing plat and field-notes.

WM. ARMSTRONG,
Deputy Surveyor, Milam Dist.

I, Geo. D. Richard, district surveyor of Milam district, do hereby certify that I have examined the foregoing plat and field-notes and find them correct, and that they are recorded in my office in Book B No. 162, page 162.

324 Given under my hand, at Belton, this 24th day of February, 1869.

GEO. D. RICHARD,
District Surveyor, Milam District.

File 16989. Milam scrip. Field-notes, 640 acres. Eastern Texas R. R. Co. Correct on map of Shackelford county. July 17, '75. M. J. Doyle. June 30, '86. Herman Pressler. P't'd July 3, '86. Byrne. C. C., Feb'y 3, '70. Richardson.

STATE OF IOWA, }
County of Dubuque. }

Know all men by these presents that I, Frank Robinson, of Dubuque county, State of Iowa, for and in consideration of the sum of one hundred and thirty-two ($132) dollars to me in hand paid by Robert S. Hoglen, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said Robert S. Hoglen all my right, title, interest, and claim in and to the State school lands hereinafter described, set apart for sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of land in organized counties as surveyed by rail-
325 road companies and other works of internal improvement and set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties," approved April 6, 1881, and described as follows: All of section No. 162, block —, Shackelford county, Texas, surveyed for Eastern Texas Railroad Company by certificate No. 21–363, and to contain 640 acres, the field-notes of which are on file in the general land office of the State of Texas; to have and to hold all and singular the land above described unto the said Robert S. Hoglen, his heirs and assigns forever. The said Robert S. Hoglen assumes all future payments to be made thereon, and I, the said Frank Robinson, hereby authorize the issuing of patent to him or his heirs or assigns when such payments shall have been made according to law.

Witness my hand, at Dubuque, Iowa, this the 5th day of March, A. D. 1885.

FRANK ROBINSON.

STATE OF IOWA, }
County of Dubuque, } ss:

Before me, the undersigned authority, this day personally came and appeared Frank Robinson, to me well and personally
326 known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Dubuque, Iowa, this the 5th day of March, 1885.

[SEAL.] B. W. LACY,
Notary Public in and for said County.

File 16989. Shackelford county school land. Frank Robinson to R. S. Hoglen. Transfer. Filed June 16, '86. D. N. Robinson, chief clerk.

Deed from Frank Robinson to Robert S. Hoglen. Date, March 5, 1885. Section 162, bl'k —, Shackelford county, State of Texas. Certificate No. 21-363.

STATE OF TEXAS, }
County of Travis. }

Know all men by these presents that I, Robert S. Hoglen, of Cook county, State of Illinois, for and in consideration of the sum of six hundred and forty dollars to me in hand paid by A. W. Becker, of the county of Cook, State of Illinois, have this day granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, unto the said A. W. Becker all my right, title, interest,
327 and claim in and to the State school lands hereinafter described, set apart for *the* sale in accordance with the provisions of "An act to amend the caption and sections one, two, three, four, five, six, seven, and eight of an act to provide for the sale of lands in organized counties as surveyed by railroad companies and other works of internal improvement, set apart for the benefit of the common-school fund, to provide for the investment of the proceeds, and to repeal all laws in conflict therewith, approved July 8, 1879, and to provide for the sale of such lands in unorganized counties, approved —— 6, 1881," and described as follows: In Shackelford county, Texas, surveyed for the Eastern Texas Railroad Company by virtue of certificate No. 21-363, and to contain 640 acres, the field-notes of which are on file in general land office of the State of Texas; to have and to hold all and singular the lands above described unto the said A. W. Becker, his heirs and assigns forever. The said A. W. Becker assumes all future payments to be made thereon, and I, the said Robert S. Hoglen, hereby authorize the issuing of patent

to him, his heirs or assigns, when such payments shall have
328 been made according to law.

Witness my hand, at Austin, Texas, this the 28th day of April, A. D. 1886.

ROBERT S. HOGLEN.

STATE OF TEXAS, }
County of Travis, } ss:

Before me, the undersigned authority, this day personally came and appeared Robert S. Hoglen, to me well and personally known to be the identical person whose name is subscribed to the foregoing instrument of writing as grantor therein, and he acknowledged to and before me that he executed the same for all uses, purposes, and considerations therein expressed.

Given under my hand and official seal, at my office, at Austin, Texas, this 28th day of April, 1886.

[SEAL.] J. M. THORNTON,
Notary Public in and for said County.

Deed from Robert S. Hoglen to A. W. Becker, dated April 28, 1886. Section 162, bl'k —, Shackelford county, State of Texas. Certificate No. 21363.

File 16989. Shackelford county school land. R. S. Hoglen to A. W. Becker. Transfer. Filed June 16, '86. D. N. Robinson, chief clerk.

329 TREASURER'S OFFICE, AUSTIN, TEXAS, *June* 15, 1886.

Received of A. W. Becker, on account of Frank Robinson, the sum of seven hundred and eighty & $\frac{93}{100}$ dollars, the same being interest to June 15, '86, and full principal on note No. —, for ——, date ——, given by said —— —— on account of purchase of all of section No. 162 of State school lands in Shackelford county, under an act to provide for the sale of alternate sections of land set apart for the benefit of the common-school fund, approved April 6, 1881.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer.

172 93, int.
608 00, prin.

780 93, total. I. June 25, '86.

File 16989. Shackelford Co. Treas. receipt. Final pay't. Frank Robinson. Filed June 26, '86. W. C. Walsh, com'r.

Shackelford Co., '85. File 16989. Shackelford county school lands. Frank Robinson. 640 acres, section No. 162. E. T. R. R. Co. No. certificate, 21–363. See Mil. S. 1269 for Co. sec. April, 1881. See file 13262 for same land. Covers M. Fisher (F. 13262), otherwise correct on map of Shackelford county. June 30, 1886. Herman Pressler. Correct for patenting to A. W. Becker, ass'ee. July 3, '86. Walsh. Patented July 3, '86. Byrne. No. 40, vol. 6. M'k'd p't'd & reg. M'g'l, 16989.

330 GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Sep.* 27, 188–.

I, R. M. Hall, commissioner of the general land office, do hereby certify that the foregoing 8 pages contains full, accurate, and complete copies of the following papers on file in and archives of this office, viz:

1. Application to purchase, with all endorsements thereon.
2. Treasurer's receipt for first payment, with all endorsements thereon.
3. Field-notes of survey No. 162, with all endorsements thereon.
4. Transfer from Frank Robinson to Robert S. Hoglen, with all endorsements thereon.
5. Transfer from Robert S. Hoglen to A. W. Becker, with all endorsements thereon.
6. Treasurer's receipt for final payment, with all endorsements thereon.
7. Endorsements on file wrapper covering above papers.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

331 EXHIBIT No. 1.

AUSTIN, TEXAS, *January* 24, 1882.

Hon. W. C. Walsh, com. gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Frank Robinson, of Dubuque, Iowa, made application for the purchase, in Shackelford Co., Texas, of section No. 46, certificate No. 158, issued by the State of Texas to the Eastern Texas Railroad Company, said application being made under authority — an act approved April 6, 1881, regulating sale of public domain of the State of Texas. I further inform you that, as agent and attorney-in-fact of said Frank Robinson, I, on January 18, 1883, tendered the treasurer of the said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which *was* tender was declined by the treasurer of said State, he alleging as cause thereof that on- F. B. Jacobs had made a prior payment in- treasury of said State on account of purchase of said land under an application for the purchase thereof made January 2, 1883. This is therefore to protest in the name of the said Frank Robinson against the issuing of any patent on said land to said F. B. Jacobs,
332 or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent and Attorney-in-Fact of Frank Robinson.

AUSTIN, TEXAS, *March* 2, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Frank Robinson, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 46, certificate No. 158, issued by said State to the Eastern Texas R. R. Company, & located in Shackelford county; which tender was refused by said treasurer on grounds hereinafter specified, who indorsed upon the original application of said Frank Robinson the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered interest on the within application, which is refused because of prior payment.

W. B. WORTHAM,
333 *Ch'f Clk & Act'g Treasurer.*"

I further inform you that, as agent and attorney-in-fact of said Frank Robinson, I, on the 1st March, 1884, tendered to the said treasurer interest and principal in full due said State on said lands; which tender was declined also, on the grounds hereinafter named, by said treasurer, who indorsed upon said application the following statement:

"AUSTIN, TEXAS, *March* 1, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest and principal in full on within application, the — being refused because of prior payment.

F. R. LUBBOCK, *Treasurer.*"

The tenders above named were declined by said treasurer on the grounds that one F. B. Jacobs had made a prior payment to said State on said land under an application bearing date January 2, 1883, and said payment being made January 9, '83. Said application and payment were made prior to the expiration of the said Frank Robinson file, and under the law the surveyor had no right to accept a file from any one until after the expiration of said Frank Robinson file, which did not expire until February 23, 1883.

334 Therefore the said F. B. Jacobs file, made January 2, 1883, as aforesaid, is illegal and void, and I therefore hereby protest against the issuing of any patent on said land to said F. B. Jacobs, or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully, FRANK ROBINSON,
By J. A. RHOMBERG,
His Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of the protests filed in this office by J. A. Rhomberg, attorney-in-fact for Frank Robinson, on Feb'y 15, 1883, and April 23, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] R. M. HALL,
Commissioner.

335 EXHIBIT No. 2.

AUSTIN, TEXAS, *Jan'y 24th*, 1882.

Hon. W. C. Walsh, com'r general land office of State of Texas, Austin, Texas.

SIR: As the agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 62, certificate No. 166, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating sale of public domain of the State of Texas. I further inform you that, as the agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 18th of January, 1883, tendered the treasurer of said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the treasurer of said State of Texas, he alleging as cause therefor that one F. B. Jacobs had made a prior payment into the treasury of said State on account of purchase of said land under an application for the purchase thereof made January 2, 1883. This is *to*
336 therefore to protest in the name of said Maggie L. Rhomberg against the issuing of any patent on said land to said F. B. Jacobs, or any other person whomsoever other than said Maggie L. Rhomberg, under and by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent and Attorney-in-Fact of Maggie L. Rhomberg.

AUSTIN, TEXAS, —— —.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas interest due said State up to Jan'y 1, 1884, on section No. 62, certificate No. 166, issued by said State to the Eastern Texas R. R. Company, and located in Shackelford county; which tender was declined by said treasurer on grounds hereinafter specified, who endorsed

upon the original application of said Maggie L. Rhomberg the following statement:

"FEBRUARY 23, '84.

337 This is to certify that J. A. Rhomberg has this day tendered interest on the within application, which is refused on account of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer."

I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 1st day of March, 1884, tendered the said treasurer interest and principal in full due said State on said land; which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March* 1, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum $669.47, being interest and principal in full on the within application, the same being refused because of prior payment.

F. R. LUBBOCK, *Treasurer.*"

The tenders above named were declined by said treasurer on the grounds that one F. B. Jacobs had made a prior payment to said State on said land under an application for the purchase of the same, said application bearing date January 2, 1883, and said payment being made Jan'y 9, '83. Said application and payment were
338 made prior to the expiration of said Maggie L. Rhomberg's file, and under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb'y 23, 1883. Therefore the said F. B. Jacob file, made Jan'y 2 as aforesaid, is illegal and void, and I therefore hereby protest against the issuing of any patent on said land to said F. B. Jacobs, or any other person whomsoever other than the said Maggie L. Rhomberg, under and by virtue of the authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully,

MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct.* 1, 1884.

I, R. M. Hall, commissioner of general land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of the protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15, 1883, and April 23, 1884, the original being now on file in this office.

339 In testimony I have hereunto set my hand and affixed the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT 3.

AUSTIN, TEXAS, *Jan'y* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office of State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 64, certificate No. 164, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of public domain of the State of Texas. I further inform you that, — the agent and attorney-in-fact of the said Maggie L. Rhomberg, I, on the 18th day of January, A. D. 1883, tendered the treasurer — said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which
340 tender was declined by the treasurer of said State, he alleging as cause therefor that one F. B. Jacobs had made a prior payment into the treasury of said State on account of the purchase of said land under an application for the purchase thereof made Jan'y 2, 1882. This is therefore to protest in the name of said Maggie L. Rhomberg against the issuing of any patent on said land to said F. B. Jacobs, or any other person whomsoever other than the said Maggie L. Rhomberg, under and by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent & Attorney-in-Fact of Maggie L. Rhomberg.

AUSTIN, TEXAS, *March* 2, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, '84, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 64, certifi-
341 cate No. 167, issued by said State of Texas to the Eastern Texas Railroad Company, situated in Shackelford county; which tender was declined by said treasurer on grounds hereinafter specified, who endorsed upon the original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, 84.—This is to certify that J. A. Rhomberg has this day tendered interest on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer."

I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the first of March, 1884, tendered said treasurer interest and principal in full due said State on said land; which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March* 1, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.37 *dollars*, being interest and principal in full on the within application, same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

342 The tenders above named were declined by said treasurer on the grounds that one F. B. Jacobs, had made a prior payment to said State on said land under an application for the purchase of same, said application bearing date Jan'y 2, 1883, and said payment being made Jan'y 9, 1883. Said application and payment were made prior to the expiration of said Maggie L. Rhomberg's file, & under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb'y 23, 1883. Therefore the said F. B. Jacobs file, made Jan'y 2 as aforesaid, is illegal & void, and I therefore hereby protest — of said Maggie L. Rhomberg against the issuing any patent on said land to said F. B. Jacobs, or any other person whomsoever other than the said Maggie L. Rhomberg, under and by virtue of the authority of any application for the purchase of said land made subsequent to November 25, 1882.

Very respectfully, MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

343 I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of the protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15th, 1883, and April 23d, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT No. 4.

AUSTIN, TEXAS, *January* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office of State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 66, certificate No. 168, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act
344 approved April 6, 1881, regulating the sale of public domain of the State of Texas. I further inform you that, as agent and attorney-in-fact of the said Maggie L. Rhomberg, I, on the 18th day of January, A. D. 1883, tendered the treasurer of said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the said treasurer, he alleging as cause therefor that one F. B. Jacobs had made a prior payment into the treasury of said State on account of the purchase of said land under an application for the purchase thereof made January 2, 1883. This is therefore to protest in the name of the said Maggie L. Rhomberg against the issuing of any patent on said land to said F. B. Jacobs, or any other person whomsoever other than said Maggie L. Rhomberg, under and by virtue of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent & Attorney-in-Fact of Maggie L. Rhomberg.

AUSTIN, TEXAS, *March* 2, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

345 SIR: As agent & attorney-in-fact for the owner thereof, I hereby give you notice that on February 23, 1884, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due the said State up to Jan. 1st, 1884, on section No. 66, certificate No. 168, issued to the Eastern Texas R. R. Co. by the said State of Texas, and located in Shackelford county; which tender was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg this day tendered interest on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treasurer."

I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 1st of March, 1884, tendered to said treasurer interest and principal in full due said State on said land;

which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon the said application the following statement:

"AUSTIN, TEX., *March* 1, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, has
346 this day tendered the sum of six hundred sixty-nine & $\frac{47}{100}$ ($669.47) —, being interest and principal in full on the within application, same being refused because of prior payment.

F. R. LUBBOCK, *Treasurer.*"

The tenders above named were declined by said treasurer on the grounds that one F. B. Jacobs had made a prior payment to the said State on said land under an application to purchase the same, said application bearing date Jan'y 2, 1883, and said payment being made Jan'y 9, 1883. Said application & payment were made prior to the expiration of Maggie L. Rhomberg's file, & under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb'y 23, 1883. Therefore the said F. B. Jacobs' file, made Jan'y 2 as aforestated, is illegal & void, & I therefore hereby protest against the issuance of any patent on said land to said F. B. Jacobs, or any other person than the said Maggie L. Rhomberg, under and by virtue of authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully, MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
347 *Her Attorney-in-Fact.*

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct.* 1*st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above & foregoing 3 pages contain true and correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15, 1886, and on April 23, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day & year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT No. 5.

AUSTIN, TEXAS, *Jan'y* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office, State of Tex., Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in
348 Shackelford county, Texas, of section No. 68, certificate No. 169, issued by the State of Texas to the Eastern Texas Rail-

road Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas. I further inform you that, as the agent and the attorney-in-fact of said Maggie L. Rhomberg, I, on the 18th day of Jan'y, A. D. 1883, tendered the treasurer of the said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the treasurer of said State, he alleging as cause therefor that one F. B. Jacobs had made a prior payment to the said treasury of said State on account of purchase of said land under an application for the purchase thereof made Jan'y 2, 1883. This — therefor- to protest in the name of the said Maggie L. Rhomberg against the issuance of any patent to said F. B. Jacobs, or any other person whomsoever other than the said Maggie L. Rhomberg, under & by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
349 *Agent & Attorney-in-Fact of Maggie L. Rhomberg.*

AUSTIN, TEXAS, *March* 2, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1st, 1884, on section No. 68, certificate No. 169, issued to the Eastern Texas R. R. Co. by said State, and located in Shackelford county; which was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered interest on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r."

I further inform you that, as agent and attorney-in-fact of the said Maggie L. Rhomberg, I, on the 1st of March, 1884,
350 tendered to the said treasurer interest and principal in full due said State on said *on said* land; which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March* 1, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest and principal in full on the within application, same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by the said treasurer on the grounds that one F. B. Jacobs had made a prior payment to said State on said land under an application for purchase of same, said application bearing date Jan. 21, 1883, and said payment being made Jan'y 9, 1883. Said application and payment were made prior to the expiration of said Maggie L. Rhomberg's file, and under the law the surveyor had no right to accept a file from any one until the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb'y 23, 1883. Therefore the said F. B. Jacobs' file, made Jan'y 2 as aforesaid, is illegal and void, and I
351 therefore hereby protest against the issuance of any patent on said land to said F. B. Jacobs, or any other person other than said Maggie L. Rhomberg, under and — virtue of the authority of any application for the purchase of said land made subsequent to November 25, 1882.

Very respectfully, MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15th, 1883, and April 23, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

352 EXHIBIT NO. 6.

AUSTIN, TEXAS, *Jan'y* 24, '83.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As an agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Frank Robinson, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 120, certificate No. 255, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas.

I further inform you that, as the agent and attorney-in-fact of said Frank Robinson, I, on the 18th day of January, A. D. 1883, tendered the treasurer of said State of Texas the first one-twentieth of the purchase price of said land; which tender was declined by the treasurer of said State, he alleging as cause therefor that one F. B. Jacobs had made a prior payment into the treasury of said State on account of the purchase of said land under an application for the

purchase thereof made Jan'y 2, 1883. This is therefore to protest in the name of said Frank Robinson against the issuance of
353 any patent on said land to said F. B. Jacobs, or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequent to November 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent and Attorney-in-Fact of J. A. Rhomberg.

AUSTIN, TEXAS, *March* 2, 1884.

Hon. W. C. Walsh, com'r general land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Frank Robinson, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 120, certificate No. 255, issued by said State to the Eastern Texas R. R. Co., & located in Shackelford county; which tender was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of said Frank Robinson the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. on the within application, which is refused
354 because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r."

I further inform you that, as agent & attorney-in-fact of said Frank Robinson, I, on the 1st of March, 1884, tendered to said treasurer interest and principal in full due said State on said land; which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEX., *March 1st*, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest & principal in full on the within application, the same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by said treasurer on the grounds that one F. B. Jacobs had made a prior payment to said State on said land under an application for purchase of same, said application bearing date Jan'y 2, 1883, and said payment being made Jan'y 9, '83. Said application & payment were made prior to the expiration of said Frank Robinson's file, & under the law the surveyor
355 had no right to accept a file from any one until after the expiration of said Robinson's file, which did not expire until Feb. 23, 1883. Therefore the said F. B. Jacobs' file, made Jan'y 2 as aforesaid, is illegal & void, and I therefore hereby protest in the name of said Frank Robinson against the issuance of any patent

on said land to said F. B. Jacobs, or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequent to November 25, 1882.

Very respectfully,

FRANK ROBINSON,
By J. A. RHOMBERG,
His Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the gen'l land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Frank Robinson, on Feb'y 15th, 1883, and April 23d, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the
356 impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT No. 7.

AUSTIN, TEXAS, *January* 24, 1884.

Hon. W. C. Walsh, com'r gen'l land office of State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Frank Robinson made application for the purchase, in Shackelford county, Texas, of section No. 122, certificate No. 256, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas. I further inform you that, as the agent and attorney-in-fact of said Frank Robinson, I, on the 18th day of January, A. D. 1883, tendered the treasurer of the State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the said treasurer, he alleging as cause therefor that one F. B. Jacobs had made a prior payment into the treasury of said State of Texas on account
357 of the purchase of said land under an application for the purchase thereof made Jan'y 2, 1882. This is therefore to protest in the name of said Frank Robinson against the issuance of any patent on said land to the said F. B. Jacobs, or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequently to November 25, A. D. 1882.

J. A. RHOMBERG,
Agent and Attorney-in-Fact of Frank Robinson.

AUSTIN, TEXAS, *March* 2*d*, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on February 23d, 1884, Frank Robinson, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to January 1st, 1884, on section No 122, certificate No. 256, issued by said State to the Eastern Texas Railroad Company, & located in Shackelford county; which tender was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of Mr. Robinson the following statement:

358 "Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r."

I further inform you that, as agent and attorney-in-fact of said Robinson; I, on 1st March, 1884, tendered said treasurer int. & principal in full due said State on said lands; which tender was declined, also on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEX., *March* 1, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of six hundred and sixty-nine & $\frac{47}{100}$ (8669.47) dollars, being interest and principal in full on the within application, same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by said treasurer on the ground that one F. B. Jacobs had made a prior payment to said State on said land under an application for purchase of
359 same, said application bearing date Jan'y 2, 1883, and said payment being made Jan'y 9, 1883. Said application and payment were made prior to the expiration of the file of said Frank Robinson, and under the law the surveyor had no right to accept a file from any one until after the expiration of file of said Robinson. Said Robinson file did not expire until 23d of Feb'y, 1883. Therefore the file made by the said Jacobs, which was made on Jan'y 2 as aforesaid, is illegal and void, and I do therefore protest in the name of the said Frank Robinson against the issuance of any patents on said land to said F. B. Jacobs, or any other per-on whomsoever other than the said Frank Robinson, under & by virtue of the authority of any application for purchase of said land made subsequently to Nov. 25, 1882.

Very respectfully,

FRANK ROBINSON,
By J. A. RHOMBERG,
His Attorney-in-Fact.

AUSTIN, TEXAS, *Oct.* 1*st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 3 pages contain true and
360 correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Frank Robinson, on Feb'y 15, '83, and April 23, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the date last above written.

[SEAL.] R. M. HALL,
Commissioner.

Exhibit No. 8. Shackelford Co., '83. File 13011. Shackelford county school land. F. B. Jacobs. 640 acres, section No. 46. E. T. R. R. Co. ≠158. Act April 6, 1881. See file 16986 for same land. Certificate showing the within survey had been previously sold to Frank Robinson & a patent issued thereon & delivered to the State treas'r Jan'y 22, 1887. R. M. Hall, com'r. Vol. 10, *pp.* 235. M'g'l, 13011.

Exhibit No. 9. Shackelford Co., '83. File 13012. Shackelford county school land. F. B. Jacobs. 640 acres, section No. 64. E. T. R. R. Co. ≠ 167. Act April 6, 1881. See S. L. file 16980 for same land. Certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treas'r Jan'y 22, 1887. R. M. Hall, com'r. M'g'l, 13012. Vol. 10, *pp.* 236.

Exhibit No. 10. Shackelford Co., '83. File 13013. Shackelford county school land. F. B. Jacobs. 640 acres, section No. 64. E. T. R. R. Co. ≠ 167. Act April 6, 1881. See S. L. file 16980 for same land. Certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treasurer Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13013. Vol. 10, *pp.* 235.

361 Exhibit No. 11. Shackelford Co., '83. File 13014. Shackelford Co. school lands. F. B. Jacobs. 640 acres, section No. 66. E. T. R. R. Co. ≠ 168. Act 6 April, 1881. See S. L. file 16981 for same land. Certificate showing the within survey had been previously sold to Maggie L. Rhomberg and a patent issued thereon. Issued & delivered to the State treas'r Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13014. Vol. 10, *pp.* 237.

Exhibit No. 12. Shackelford Co., '83. File 13015. Shackelford county school lands. F. B. Jacobs. 640 acres, section No. 68. E. T. R. R. Co. ≠ 169. Act April 6, 1881. See S. L. file 16982 for same lands. Certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treas'r Jan'y 22, '87. R. M. Hall, com'r. M'g'l, —. Vol. —, *pp.* 234.

Exhibit No. 13. Shackelford Co., '83. File 13016. Shackelford county school lands. F. B. Jacobs. 640 acres, section No. 120. E. T. R. R. Co. ≠ 225. Act April 6, 1881. See file 16987 for same land. A certificate showing the within survey had been previously sold to Frank Robinson — issued thereon. Issued & delivered to

the State treas'r Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13016. Vol. 10, p. 241.

Exhibit No. 14. Shackelford Co., '83. File 13017. Shackelford county school land. F. B. Jacobs. 640 acres, section No. 122. E. T. R. R. Co. = 256. Act April 6, 1881. See file 16988 for same land. A certificate showing the within survey had been previously sold to Frank Robinson & a patent issued thereon. Issued & delivered to the State treas'r Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13017. Vol. 10, *pp.* 236.

Exhibit No. 19. Shackelford Co., '83. File 13259. Shackelford county school land. Malinda Fisher. 640 acres, section No. 76. E. T. R. R. Co. = 173. Act April 6, 1881. See file 16983 for same land. A certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treas'r Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13259. Vol. 10, *pp.* 22.

362 Exhibit No. 20. Shackelford Co., '83. File 13260. Shackelford county school land. Malinda Fisher. 640 acres, section No. 96. E. T. R. R. Co. = 200. Act April, 1881. See S. L. file 16984 for same land. A certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treasurer Jan'y 22, '87. R. M. Hall. M'g'l, 13260. Vol. 10, *pp.* 23.

Exhibit No. 21. Shackelford Co., '83. File 13261. Shackelford county school land. Malinda Fisher. 640 acres, section No. 116. E. T. R. R. Co. = 253. Act April 6, 1881. See S. L. file No. 16985 for same land. A certificate showing the within survey had been previously sold to Maggie L. Rhomberg & a patent issued thereon. Issued & delivered to the State treasurer Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13261. Vol. 10, *pp.* 22.

Exhibit No. 22. Shackelford Co., '83. File 13262. Shackelford county school land. Malinda Fisher. 640 acres, section No. 162. E. T. R. R. Co. = 21-363. Act April 6, 1881. See file 16989 for same land. A certificate showing the within survey had been previously sold to Frank Robinson & a patent issued thereon. Issued & delivered to the State treasurer Jan'y 22, '87. R. M. Hall, com'r. M'g'l, 13262. Vol. 16, *pp.* 23.

GENERAL LAND OFFICE, AUSTIN, TEXAS, *Oct.* 1, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 2 pages contain a full, accurate, & complete copies of the endorsements on wrappers of school-

363 land files numbered 13011, 13012, 13014, 13015, 13016, 13017, 13259, 13260, 13261, & 13262, now on file in and archives of this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day & year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT 15.

AUSTIN, TEXAS, *Jan'y* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 76, certificate No. 173, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas. I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 18th day of January, A. D. 1883, tendered the treasurer of the said State of Texas the first one-twentieth ($\frac{1}{20}$) of purchase price of said land; which tender
364 was declined by the treasurer of said State, he alleging as cause therefor that one Malinda Fisher had made a prior payment unto the treasury of the said State on account of the purchase of said land under an application for the purchase thereof made Jan'y 8, 1883. This — therefore to protest in the name of the said Maggie L. Rhomberg against the issuance of any patent on said land to said Malinda Fisher, or any other person whomsoever other than the said Maggie L. Rhomberg, under & by virtue of the authority of *my* application for the purchase of said land made subsequent to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent and Attorney-in-Fact of Maggie L. Rhomberg.

GENERAL LAND OFFICE, AUSTIN, TEX., *Oct.* 1, 1881.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing is a true and correct copy of protest filed in this office Feb'y 15, '83, by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, the original being now on file in this office.

In testimony whereof I hereunto set my hand and affix
365 the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT 15.

AUSTIN, TEX., *March* 2, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due the said State up to Jan'y 1, 1884, on section No. 76, cer-

tificate No. 173, issued by said State to the Eastern Texas R. R. Co., and located in Shackelford county; which tender was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered interest on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r."

I further inform you that, as agent & attorney-in-fact of said
366 Maggie L. Rhomberg, I, on the 1st day of March, 1884, tendered the said treasurer interest and principal in full due said State on said land; which tender was declined also, on the ground hereinafter named, by said treasurer, who indorsed upon said application the following statement:

"AUSTIN, TEXAS, *March* 1 '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest and principal in full on the within application, same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by the said treasurer on the grounds that one Malinda Fisher had made a prior payment to said State on said land under an application for purchase of same, said application bearing date of Jan'y 8, 1883, and said payment being made Jan'y 15, 1883. Said application & payment were made prior to the expiration of said Maggie L. Rhomberg's file, & under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb'y 23, 1883. Therefore said Malinda Fisher's
367 file, made January 8 as aforesaid, is illegal & void, & I therefore hereby protest in the name of the said Maggie L. Rhomberg against the issuance of any patent on said land to said Malinda Fisher, or any other person whomsoever than said Maggie L. Rhomberg, under & by virtue of the authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully,
MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE, AUSTIN, TEXAS, *Oct.* 1, '88.

I, R. M. Hall, commissioner of the general land office, hereby certify that the foregoing 2 pages contain a full and complete copy of the protest filed in this office April 23, 1884, for Maggie L. Rhomberg, the original being now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said office the day & year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

368 EXHIBIT 16.

AUSTIN, TEXAS, *January* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office of State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 96, certificate No. 200, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas. I further inform you that, as the agent and attorney-in-fact of the said Maggie L. Rhomberg, I, on the 18th day of January, 1883, tendered the treasurer of said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the treasurer of said State, he alleging as cause therefor that one M. Fisher had made a prior payment into the treasury of said State on account of the purchase of said land under an application for the purchase thereof made Jan'y 8, 1883. This is therefore to protest in the name of said Maggie L. Rhomberg against the issuance of any patent on said land to said M. Fisher, or any other person whomsoever other than the said Maggie L. Rhom-
369 berg, under and by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Ag't & Attorney-in-Fact of Maggie L. Rhomberg.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the foregoing is a true & correct copy of protest filed in this office Feb'y 13, '83, by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, the original being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

AUSTIN, TEXAS, *March 2d*, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin.

SIR: As agent & attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23d, 1884, Maggie L. Rhomberg, of

Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 96,
370 certificate No. 200, issued by said State to the Eastern Texas R. R. Co., and located in Shackelford county; which tender was declined by said treasurer on grounds hereinafter specified, who endorsed upon the original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r.

I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the first day of March, 1884, tendered to said treasurer interest and principal in full due said State on said land; which tender was declined also, on the grounds hereinafter specified by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest & principal in full on the within application, the same being refused because of prior payment.

"F. R. LUBBOCK, *Treas.*"

The tenders above named were declined by said treasurer on the ground that one Melinda Fisher had made a prior payment
371 to said State on said land under an application for purchase of same, said application bearing date of Jan'y 8, 1883, & said payment being made Jan'y 15, 1883. Said application & payment were made prior to the expiration of said Maggie L. Rhomberg's file, & under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb. 23, 1883. Therefore the said Melinda Fisher's file, made Jan'y 8 as aforesaid, is illegal and void, and I therefore hereby protest in the name of said Maggie L. Rhomberg against the issuance of any patent on said land to said Melinda Fisher, or any other person whomsoever other than the said Maggie L. Rhomberg, under & by virtue of the authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully,

MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby

certify that the above and foregoing 2 pages contain a full and complete copy of protest filed in this office April 23,
372 '84, by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, the original being now on file in this office.

In testimony whereof I hereunto set my hand & affix the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT No. 17.

AUSTIN, TEXAS, *Jan'y 24th*, 1883.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Nov. 25, 1882, Maggie L. Rhomberg, of Dubuque, Iowa, made application for the purchase, in Shackelford county, Texas, of section No. 116, certificate No. 253, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act approved April 6, 1881, regulating the sale of the public domain of the State of Texas. I further inform you that, as the agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 18th day of Jan.; A. D. 1883, tendered the treasurer of said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the treasurer of the said State, he alleging as
373 cause therefor that one Malinda Fisher had made a prior payment into the treasury of said State on account of the purchase of said land under an application for the purchase thereof made Jan'y 8, 1883. This is therefore to protest in the name of Maggie L. Rhomberg against the issuance of any patent on said land to Malinda Fisher, or any other person whomsoever other than the said Maggie L. Rhomberg, under and by virtue of the authority of any application for the purchase of said land *land* made subsequently to November 25th, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent & Att'y-in-Fact of Maggie L. Rhomberg.

AUSTIN, TEXAS, *March 2d*, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on Feb'y 23, 1884, Maggie L. Rhomberg, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 116, certificate No. 253, issued by said State to the Eastern Texas R. R. Co., & located in Shackelford county; which tender was declined
374 on grounds hereinafter specified by said treasurer, who endorsed upon the said original application of said Maggie L. Rhomberg the following statement:

"Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. on the within application, which is refused because of prior payment.

W. B. WORTHAM,
Chf Clk & Act'g Treas'r."

I further inform you that, as agent and attorney-in-fact of said Maggie L. Rhomberg, I, on the 1st day of March, 1884, tendered to said treasurer interest & principal in full due said State on said land; which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March 1st*, '84.

This is to certify that J. A. Rhomberg, agent for applicant, this day tendered the sum of $669.47, being interest and principal in full on the within application, the same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by said treasurer on the ground that one Malinda Fisher had made a prior payment to said State on said land under an application for purchase of same, said application bearing date of Jan'y 15, 1883. Said application
375 & payment were made prior to the expiration of said Maggie L. Rhomberg's file, & under the law the surveyor had no right to accept a file from any one until after the expiration of said Maggie L. Rhomberg's file, which did not expire until Feb. 23, 1883. Therefore the said Melinda Fisher's file, made Jan'y 8 as aforesaid, is illegal & void, and I therefore hereby protest in the name of said Maggie L. Rhomberg against the issuance of any patent on said land to said Malinda Fisher, or any other person whomsoever other than the said Maggie L. Rhomberg, under & by virtue of the authority of any application for the purchase of said land made subsequent to November 25, 1882.

Very respectfully, MAGGIE L. RHOMBERG,
By J. A. RHOMBERG,
Her Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the gen'l land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15, 1883, and April 23d, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix
376 the impress of the seal of said office the day and year last above written.

[SEAL.] (Signed) R. M. HALL,
Commissioner.

EXHIBIT No. 18.

AUSTIN, TEXAS, *Jan'y* 24, 1883.

Hon. W. C. Walsh, com'r gen'l land office of State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact of the owner thereof, I hereby give you notice that on Nov. 25, 1882, Frank Robinson, of Dubuque, Iowa, made application for the purchase, in Shackelford Co., Texas, of section No. 162, certificate No. 21–363, issued by the State of Texas to the Eastern Texas Railroad Company, said application for purchase being made under authority of an act regulating the sale of the public domain of the State of Texas, approved April 6, 1881. I further inform you that, as the agent and attorney-in-fact of said Frank Robinson, I, on the 18th day of January, A. D. 1883, tendered the treasurer of said State of Texas the first one-twentieth ($\frac{1}{20}$) of the purchase price of said land; which tender was declined by the said treasurer, he alleging as cause therefor that one M. Fisher had made a prior payment into the treasury of said State on account of the purchase of said land under an application
377 for the purchase thereof made January 8, 1883. This is therefore to protest in the name of said Frank Robinson against the issuance of any patent on said land to said M. Fisher, or any other person whomsoever other than the said Frank Robinson, under and by virtue of the authority of any application for the purchase of said land made subsequently to Nov. 25, 1882.

Respectfully yours, J. A. RHOMBERG,
Agent & Attorney-in-Fact of Frank Robinson.

AUSTIN, TEXAS, *March 2d*, 1884.

Hon. W. C. Walsh, com'r gen'l land office, State of Texas, Austin, Texas.

SIR: As agent and attorney-in-fact for the owner thereof, I hereby give you notice that on February 23, 1884, Frank Robinson, of Dubuque, Iowa, tendered to the treasurer of the State of Texas the interest due said State up to Jan'y 1, 1884, on section No. 168, certificate No. 20–363, issued by said State to the Eastern Texas R. R. Company, & located in Shackelford county; which tender was declined on grounds hereinafter specified by said treasurer, who endorsed upon the original application of said Frank Robinson the following statement:

378 "Feb'y 23, '84.—This is to certify that J. A. Rhomberg has this day tendered int. on account — within application, which is refused because of prior payment.

W. B. WORTHAM,
Ch'f Clk & Act'g Treas'r."

I further inform you that, as agent and attorney-in-fact of said Frank Robinson, I, on the 1st day of March, 1884, tendered to said treasurer interest & principal in full due said State on said land;

which tender was declined also, on the grounds hereinafter named, by said treasurer, who endorsed upon said application the following statement:

"AUSTIN, TEXAS, *March 1st*, 1884.

This is to certify that J. A. Rhomberg, ag't for applicant, this day tendered the sum of six hundred & sixty-nine & $\frac{47}{100}$ ($669.47) dollars, being interest and principal in full on the within application, the same being refused because of prior payment.

F. R. LUBBOCK, *Treas'r.*"

The tenders above named were declined by said treasurer on the grounds that one Melinda Fisher had made a prior payment to said State on said land under an application for purchase of same, said application bearing date Jan'y 8, 1883, & said payment being made Jan'y 15, 1883. Said application and payment were made
379 prior to the expiration of said Frank Robinson's file, and under the law the surveyor had no right to accept a file from any one until after the expiration of said Robinson's file, which did not expire until Feb. 23, 1883. Therefore the said Melinda Fisher's file, made Jan'y 8, 1883, as aforesaid, is illegal & void, & I therefore hereby protest in the name of the said Frank Robinson against the issuance of any patent on said land to said Melinda Fisher, or any other person whomsoever other than the said Frank Robinson, under & by virtue of the authority of any application for the purchase of said land made subsequent to Nov. 25, 1882.

Very respectfully,

FRANK ROBINSON,
By J. A. RHOMBERG,
His Attorney-in-Fact.

GENERAL LAND OFFICE,
AUSTIN, TEXAS, *Oct. 1st*, 1888.

I, R. M. Hall, commissioner of the general land office, hereby certify that the above and foregoing 3 pages contain true and correct copies of protests filed in this office by J. A. Rhomberg, attorney-in-fact for Maggie L. Rhomberg, on Feb'y 15th, 1883, and April 23d, 1884, the originals being now on file in this office.

In testimony whereof I hereunto set my hand and affix the impress of the seal of said office the day and year last above written.

380 [SEAL.] (Signed) R. M. HALL,
Commissioner.

The foregoing interrogatories and the answers thereto are endorsed as follows, to wit:

"Filed January 25, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy."

381 United States Circuit Court, Fifth Circuit and Northern District of Texas, at Dallas.

The President of the United States of America to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of the State of Texas within the State of Iowa, Greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you or either of you and by these presents do give unto you full power and authority diligently to examine J. A. Rhomberg upon certain interrogatories propounded to him in a cause wherein The Monroe Cattle Company is plaintiff and A. W. Becker is defendant, which said cause is now pending in the circuit court of the United States for the fifth circuit and northern district of Texas, in the fifth circuit; and therefore we command that you, at certain days and places to be appointed by you for that purpose, cause the said witness to come before you, and then and there examine him upon the said interrogatories and any cross-interrogatories (copies whereof are hereto annexed) on his corporal oath first taken before you upon the Holy Evangelists, or in such other solemn manner as is and may be authorized by law, and that you do take the answers of the witness to such interrogatories and reduce the same to writing, which shall be signed and sworn to by the said witness; and you shall certify, under your hand and seal, that the same was signed and sworn to by the said witness before you and shall seal them up in an envelope, with the interrogatories and this commission, with your name written across the seal, and indorse on the envelope the names of the parties to the suit and the name of the witness and direct the package to the "clerk of the circuit court of the United States for the northern district of Texas, Dallas, Texas." If sent by mail the postmaster or his deputy mailing the same shall indorse thereon that he received them from the hands of the officer before whom the answers to said interrogatories were taken.

Witness the Honorable Samuel F. Miller, associate chief justice of the Supreme Court of the United States, and the seal of [SEAL.] the circuit court thereof, at Dallas, in said district, this 19th day of September, in the year of our Lord eighteen hundred and eighty-eight, and of American Independence the 113th year.

(Signed) A. J. HOUSTON,
Clerk of said Circuit Court.

NOTE.—The officer who executes this writ is respectfully requested to endorse on the reverse side an itemized statement of his own and any witness or other fees incurred, crediting any payment made thereon.

HOUSTON, *Clerk.*

[Endorsed:] No. 137. U. S. circuit court, northern district of Texas, at Dallas. The Monroe Cattle Company *vs.* A. W. Becker. Issued 19th day of September, A. D. 1888. Houston, clerk. Com-

mission to take the testimony of J. A. Rhomberg, witness for defendant. Opened and filed — day of ——, A. D. 188–. ——, clerk.

382 In the Circuit Court of the United States, Northern District of Texas, at Dallas. In Chancery.

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137.

Interrogatories to be Propounded to J. A. Rhomberg, a Witness for Defendant, Who Resides in the County of Dubuque, State of Iowa.

In the Circuit Court of the United States, Northern District of Texas, at Dallas. In Chancery.

THE MONROE CATTLE CO., Complainant,
vs.
A. W. BECKER, Defendant. } No. 137.

Answers to Interrogatories Propounded to J. A. Rhomberg, a Witness for Defendant, Who Resides in the County of Dubuque, State of Iowa.

Int. 1. State your name, age, place of residence, and occupation or profession.

Answer to Int. 1. My name is J. A. Rhomberg; am 55 years of age; reside in Dubuque, Iowa, and am president of the Dubuque Street Railway Co.

Int. 2. Did you ever reside in the State of Texas? If yea, during what period, and in what business were you engaged?

383. Answer to Int. 2. I resided in the State of Texas temporarily during parts of the years 1881, '82, '83, '84, & '85; was engaged in the construction and operation of the Austin & Northwestern railroad, being president and general manager and latterly receiver of said railroad during the years aforesaid.

Int. 3. This is a suit brought by the plaintiff against the defendant to cancel the patents issued by the State of Texas to the defendant to the following eleven sections of State school land situated in Shackelford county, State of Texas, to wit: Survey No. 46, made by virtue of certificate No. 158, issued by the State of Texas to the East Texas Railroad Company; survey No. 120, made by virtue of certificate No. 255, issued by the State of Texas to the East Texas Railroad Company; survey No. 122, made by virtue of certificate No. 256, issued by the State of Texas to the East Texas Railroad Company; survey No. 116, made by virtue of certificate No. 253, issued by the State of Texas to the East Texas Railroad Company; survey No. 62, made by virtue of certificate No. 166, issued by the State of Texas to the East Texas Railroad Company; survey No. 64, made by virtue of certificate No. 167, issued by the State of Texas to the East Texas Railroad Company; survey No. 66, made by virtue of certificate No. 168, issued by the State of Texas to the East Texas

Railroad Company; survey No. 76, made by virtue of cer-
384 tificate No. 173, issued by the State of Texas to the East Texas Railroad Company; survey No. 162, made by virtue of certificate No. 21–363, issued by the State of Texas to the East Texas Railroad Company; survey No. 68, made by virtue of certificate No. 169, issued by the State of Texas to the East Texas Railroad Company, and survey No. 96, made by virtue of certificate No. 200, issued by the State of Texas to the East Texas Railroad Company.

The said surveys or sections numbered 162, 122, 120, and 46 were patented to the defendant as assignee of Frank Robinson, who made application to purchase the same to the surveyor of Shackelford county on November 25, 1882, such application being recorded in said surveyor's office of that date, and the said surveys or sections numbered 66, 68, 76, 62, 96, 64, and 116 were patented to the defendant as assignee of Maggie L. Rhomberg, who made application to purchase the same to the surveyor of Shackelford county on November 25, 1882, such application being recorded in said surveyor's office of that date. Plaintiff claims said surveys or sections numbered 122, 68, 66, 64, 46, 120, and 62 as assignee of F. B. Jacobs,
who made application to purchase same to the surveyor of
385 Shackelford county on January 2, 1883, and claims said surveys or sections numbered 76, 162, 116, and 96 as assignee of Malinda Fisher, who made application to the surveyor of Shackelford county to purchase the same on January 8, 1883.

It is averred that applications to purchase said surveys or sections numbered 76, 116, 68, 96, 64, and 62 were made in the name of Margaretta Rhomberg on August 28, 1882, and that such application was received and recorded by said surveyor of Shackelford county on said date. It is also averred that application to purchase said surveys or sections numbered 162, 122, 120, and 46 were made in the name of F. M. Robinson on August 28, 1882, and that such application was received and recorded by said surveyor of Shackelford county on said date.

Did you file the applications to purchase aforesaid in the names of Margaretta Rhomberg and F. M. Robinson on August 28, 1882; if yea, in what capacity did you act? And, if you acted as agent of any person or persons, then state what person or persons. What interest, if any, did you have or were you to have in the purchase of said lands, or in any of them, in the names of said Margaretta Rhomberg and F. M. Robinson? Were the fees for recording paid to the surveyor; if yea, by whom paid and whose account paid on?

386 Was the first payment of one-twentieth of the appraised value of said lands or any part thereof paid or tendered to the State treasurer of the State of Texas within ninety days from the recording — said applications in said surveyor's office on August 28, 1882? If such payment was not paid or tendered, then state why not. If you answer that the said applications to purchase said lands by said Margaretta Rhomberg and F. M. Robinson were abandoned or withdrawn by said applicants, state when so abandoned or withdrawn and state whether said parties so applying to

purchase said lands or either of them ever claimed any right or interest in said lands or in any part thereof after the abandonment or withdrawal of their said applications to purchase. Were the said parties or either of them or was any person for them or either of them claiming any interest in said lands or in any part thereof on or after November 25, 1882?

Answer to Int. 3. Said applications were filed either by or through me. I acted in the capacity of agent for said Margaretta Rhomberg and F. M. Robinson. I never did have nor was I ever to have any interest in the purchase of said lands or any part thereof. The recording fees were paid to the surveyor. They were paid by
387 me for & on account of said applicants, Margaretta Rhomberg and F. M. Robinson. The first payment of the one-twentieth of the purchase appraised value of said lands or any part thereof was not paid to the State treasurer of the State of Texas within ninety days of August 28th, 1882. Such payment was tendered to him, however, within the said time, but was refused. My recollection is that it was only a short time before said application- were about to run out that the State treasurer was instructed by the commissioner of the general land office to reject all first payments from agents unless accompanied by power of attorney, though it had been customary to receive such payments from agents before this time, and it was done again subsequently. I was without the required written powers of att'y at the moment, and being unable to procure them in time it became necessary to abandon said applications. I cannot state the exact date of such abandonment, but know that it was only a short time before the expiration of the ninety days. Neither of said parties ever claimed any interest in said lands or any part of them after the abandonment of their files as aforesaid. Neither of said persons nor any person or persons for them ever claimed any interest in said lands or any part of them on or after Nov. 25th, 1882.

388 Int. 4. Who made the applications for the purchase of said lands in the names of said Maggie L. Rhomberg and Frank Robinson on November 25, 1882? If the same were made by or through you, then state in what capacity you acted in making such applications. If you acted as agent of any person or persons, state the names of such person or persons. Were the fees of the said surveyor for recording such applications paid; if yea, by whom paid, and on whose account paid?

What interest did you have or were you to have in the purchase of said lands or of any part thereof in the names of said Maggie L. Rhomberg and Frank Robinson? State whether the said Margaretta Rhomberg and Maggie L. Rhomberg were one and the same person or were they different persons. State also whether the said F. M. Robinson and Frank Robinson were one and the same persons or were they different persons.

Answer to Int. 4. Said applications were made either by or through me. I acted in the capacity of agent. I acted as agent for said Maggie L. Rhomberg and Frank Robinson. The recording fees on said applications were paid to the surveyor. They were paid on ac-

count of & for said applicants, Maggie L. Rhomberg & Frank
389 Robinson. I had no interest in the purchase of said lands in the name of said Maggie L. Rhomberg and Frank Robinson, nor was I to have any interest in them. The said Margaretta Rhomberg and Maggie L. Rhomberg were not one & the same person; they were different persons. The said F. M. Robinson & Frank Robinson were not one and the same persons; they were different persons.

Int. 5. Was the first payment of one-twentieth of the ass'ed value of said lands or any part thereof paid or tendered to the State treasurer of the State of Texas in behalf of said Maggie L. Rhomberg and Frank Robinson or in behalf of either of them within ninety days from November 25, 1882, the date of the record of the aforesaid of their said applications to purchase said lands? If such payment was made or tendered, state when, by whom tendered, to what person or officer tendered, and at what place. If tendered by you to the said State treasurer of the State of Texas, in what capacity did you act? If as agent for any person or persons, give the names of such person or persons. State what amount of money you tendered on each survey or section of said lands, and if such tender was refused, state why it was refused; and if the reasons of such refusal were reduced to writing, state where the same may be found.

390 Answer to Int. 5. The first payment of one-twentieth of the assessed value of all said lands was tendered to the State treasurer in behalf of said Maggie L. Rhomberg and Frank Robinson within the ninety days of November 25th, 1882. Such tender was made, I think, on January 18, 1883. The tender was made by myself. It was tendered to the treasurer of the State of Texas at Austin, in said State. I acted in the capacity of agent. I acted as agent for said Maggie L. Rhomberg and Frank Robinson under power of attorney from them. The amount of money tendered on each survey was thirty-two dollars. It was refused because the same lands under other files had previously been paid on, & under a ruling of the land commissioner that no two payments should be accepted by the treasurer on the same land under different files. This ruling was afterward changed or withdrawn. The reason of refusal of tender as aforesaid was reduced to writing and can be found on the respective files of said Maggie L. Rhomberg and Frank Robinson.

Int. 6. If you have stated that you, as agent of the said Maggie L. Rhomberg and Frank Robinson, did, on January 18, 1883, tender to the State treasurer of the State of Texas, at his office, in the city — Austin, Texas, the sum of thirty-two dollars on each
391 survey or section of said lands, as the same were severally applied for by said Maggie L. Rhomberg and Frank Robinson, then state whose money was so tendered and on whose account it was so tendered. Did you, at the time of such tender or at any time before or after such tender, have any interest in the purchase of said lands or in any part or portion thereof? How were you acting?

Answer to Int. 6. The money so tendered was that of said Maggie L. Rhomberg and Frank Robinson, and was tendered for them and on their account. I had no interest in the purchase of said lands or any part or any portion thereof, neither at the time of such tender nor before or afterwards. I was acting as the representative and agent of said Maggie L. Rhomberg and Frank Robinson.

Int. 7. When did you first learn of the applications for the purchase of the same sections of land in the names of said F. B. Jacobs and Malinda Fisher, and what action did you take, if any, to assert the claims of said Maggie L. Rhomberg and Frank Robinson to said lands and to oppose and defeat the claims of said F. B. Jacobs and Malinda Fisher and their assigns thereto? Did you file any notice or protest in the general land office of Texas? And if such papers were filed, state their general purport, and whether or not they
392 were placed in the files pertaining to the purchases of said F. B. Jacobs and Malinda Fisher. State how often and how many such notices and protests were filed. Did you make any subsequent and further tender of payment to the said State treasurer; if yea, when and on whose account did you make such tenders, how much money did you tender on each section, and what was done by the State treasurer? If he refused, did he give his reasons for such refusal in writing; if yea, where are such writings?

State when the last tender by you was made. In what capacity were you acting? Whose money was tendered? Was it accepted; if yea, on whose account? Did said State treasurer then make the proper entries on his books, and did he execute his receipts? What did you do with the applications of said Maggie L. Rhomberg and Frank Robinson and the receipts of the said State treasurer for the said first payments? If you answer that they were forwarded and filed in the general land office of the State of Texas, then state whether the commissioner of the general land office issued his receipts or certificates of purchase in lieu thereof to the said Maggie L. Rhomberg and Frank Robinson for the lands included in their respective applications, and if you still have such cer-
393 tificates attach same to your answer. In whose name and for whose benefit did you make such payments and procure said certificates of purchase? In what capacity were you acting?

Answer to Int. 7. I first learned of the applications for the purchase of the same sections of land in the name of said F. B. Jacobs and Malinda Fisher at the time I offered the first payments to the treasurer in behalf of said Maggie L. Rhomberg and Frank Robinson. I at once commenced to investigate the matter, and was surprised to be informed at the treasurer's office that the payments for said F. B. Jacobs and Malinda Fisher had been made personally in Austin by one of the members of the firm of Jacobs & Fisher, of Albany, Texas, said firm of Jacobs and Fisher being land agents at Albany and being the identical parties to whom I had sent said applications of Maggie L. Rhomberg and Frank Robinson for filing & recording in the surveyor's office of Shackelford county, which work they had attended to, returned said files to me, and were paid, in addition to the surveyor's fee, one dollar per application, another one dollar for

each application, that being their regular charges and demanded by them for work of this kind. My suspicion was at once aroused, and upon examining the applications of said F. B. Jacobs
394 and Malinda Fisher, and noticing that they had been made and recorded only a few days previous to the making of the first payment thereon, thus showing great haste, when the law allowed them ninety days for making the first payment, and further remembering that I had received several letters from said Jacobs and Fisher, the originals of which are attached hereto and made part of my answers, marked A, B, C, & D, in which they showed considerable concern about handling and selling said lands, I was satisfied that their object in view was to prevent and defeat the said Maggie L. Rhomberg and Frank Robinson in completing their purchases and to deprive them of said lands. I brought the matter to the notice of some of the State officials, but, unable to obtain any relief from them, I sent a written notice of the circumstances and entered protest against said files of F. B. Jacobs and Malinda Fisher to the commissioner of the general land office, at Austin, Texas; said notice and protests were filed with the applications of said F. B. Jacobs and Malinda Fisher. They were intended as a matter of record and for the information of any one examining the claims of said F. B. Jacobs and Malinda Fisher under said applications. There were two such notices and protests filed with each application on file of said F. B. Jacobs and Malinda
395 Fisher. I did make subsequent tenders to the State treasurer. The second tender, I think, was made on February 23, 1884, and the third on November (March 1) 1st, 1884; they were made on account of and for said Maggie L. Rhomberg and Frank Robinson. The amount tendered on each section was thirty-two dollars on February 23rd, 1884, and something like $669.47, being principal and interest, on November (March) 1st, 1884; both tenders were refused by the State treasurer. He gave his reason for such refusal in writing. The writing is on each of said applications of said Maggie L. Rhomberg and Frank Robinson. The last tender made by me was, I think, on February 17, 1885. I was acting in the capacity of agent. The money tendered was that of said applicants. It was accepted on account of said applicants, Maggie L. Rhomberg and Frank Robinson. The treasurer then made the proper entries in his books and he executed his receipts. The applications of said Maggie L. Rhomberg and Frank Robinson, as well as the receipts of the State treasurer, were forwarded to the land commissioners and were filed in the general land office at Austin, Texas. The commissioner of the general land office issued his certificates in lieu of said receipts of the State treasurer. I no longer have said certifi-
396 cates in my possession. Such payments were made and said certificates procured in the name of and for the benefit of said Maggie L. Rhomberg and Frank Robinson. I was acting in the capacity of agent.

Int. 8. It is averred that after the payment of the first installment of the assessed value of said lands in the name of said Maggie L. Rhomberg and Frank Robinson, on February 17, 1885, that the said Maggie

L. Rhomberg, joined by her husband, Jacob Rhomberg, sold and conveyed said sections numbered 66, 68, 76, 62, 96, 64, and 116 to John H. Klein, the deeds being made to each section seperately, dated February 28, 1885, and for the consideration of one hundred and thirty-two dollars per section; and also that said Frank Robinson, by his deeds of date March 5, 188 , making a seperate deed for each section, sold and conveyed to R. S. Hoglen the said sections numbered 122, 162, 120, and 46 for the consideration of one hundred and thirty-two dollars per section.

It is also averred that said John H. Klein, by his deeds of March 13, 1885, one deed being made for each section, sold and conveyed said sections numbered 68, 96, 64, 76, 66, 62, and 116 to said R. S. Hoglen for the consideration of four hundred and seventy-five dollars for each section.

397 You will now please state all you know about said conveyances made by Maggie L. Rhomberg and her husband to John H. Klein and by said Klein to R. S. Hoglen; also the conveyances by Frank Robinson to R. S. Hoglen. What consideration was paid on the execution of each of these conveyances? By whom was it paid in each case? To whom was it paid in each case? What interest did you then have in these lands or in any part thereof? What interest have you ever at any time had in the said lands or in any part thereof? In what way, if at all, were you interested in these lands or in the conveyances thereof? Was the money mentioned as the consideration in the said several deeds and conveyances actually paid? By whom was it paid? To whom paid? Did you receive any part of it? Had you any interest in it? Have you ever had any interest in these lands or in any part of them, or in the proceeds of the sales thereof or of any part thereof? If you had any such interest set it forth fully.

Answer to Int. 8th. In reply to this interrogatory will say that I know but little about the conveyances referred to, not being present at the execution of any of them. My belief is that the considerations specified in the deeds were the amounts actually paid, and such amounts were paid by the grantees to the grantors as

398 mentioned in said deeds. I had no interest whatever in said lands or any part thereof. I never at any time had any interest in said lands or any part thereof. I was never at all interested in said lands or in the conveyance thereof in any way except, as previously stated, in the capacity of agent, for which services I did not and was not to receive any interest in said lands nor any compensation or profit. The money mentioned as consideration in the said several deeds and conveyances was, to the best of my knowledge and belief, actually paid by the grantees to the grantors. I received no part of it. I had no interest in it. I never at any time had any interest in the lands nor any part of them nor in the proceeds of the sales thereof.

Int. 9. By his deed of date of April 28, 1886, one deed being executed for each section, the said R. S. Hoglen sold and conveyed the said eleven sections of land to the defendant, A. W. Becker, for the consideration of six hundred and forty dollars for each section.

State all you know about this transaction, all you know about the amount of money actually paid, who paid it, and to whom was it paid. State what interest, if any, you had in the sale of the said lands to defendant. State what interest, if any, you had in the lands or any part thereof when conveyed to defendant. State
399 what interest, if any, you had in said lands or in any part thereof after they were conveyed to defendant. State what interest, if any, you now have in said lands or in any part thereof.

Answer to Int. 9. I had nothing to do with this transaction and know only the facts recited in the deeds. I always understood and believed, however, that the amount actually paid was that mentioned in the deeds, and that it was paid by said A. W. Becker to said R. S. Hoglen. I had no interest in the sale of said lands to defendant. I had no interest in said lands or any part thereof when conveyed to defendant. I had no interest in said lands or any part thereof after they were conveyed to defendant. I most positively have no interest now in said lands or any part thereof.

Int. 10. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this suit? If yea, set forth the same fully and at large in your answers.

Answer to Int. 10. No.

(Direct interrogatories are signed "Robertson & Williams, solicitors for the defendant.")

400 In the United States Circuit Court for the Northern District of Texas, at Dallas.

I do hereby certify that the foregoing is a full, true, and correct transcript of direct interrogatories propounded by the defendant to J. A. Rhomberg, witness for the defendant in case No. 137, and styled The Monroe Cattle Company *vs.* A. W. Becker, as appears from the records of said court now in this office.

Witness the seal of said circuit court, at Dallas, Texas, and the name of the clerk thereof, this 19th day of September, 1888.

[SEAL.] (Signed) A. J. HOUSTON,
Clerk of said Court.

[Endorsed:] No. 137. In the U. S. circuit court, northern district of Texas, at Dallas. The Monroe Cattle Company *vs.* A. W. Becker. Direct interrogatories to J. A. Rhomberg, witness for defendant. Opened and filed ——, 188–. —— ——, clerk, by —— ——, deputy clerk.

401 In United States Circuit Court for the Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER.

Cross-Interrogatories Propounded by Plaintiff to J. A. Rhomberg.

In the United States Circuit Court for the Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER.

Answers to Cross-Interrogatories Propounded by Plaintiff to J. A. Rhomberg.

Cross 1st. State how many sections of school lands in Texas you have applied to the different county surveyors to purchase in your own name, and state the counties in which the said sections are situated and the numbers of blocks and surveys, and state the same facts as to such applications made by you as agent for other people, and name your principals, and state whether you had authority to act for them before acting, and say whether you had any, and what, interest in the purchases; and, if not, then say whether you were paid anything, and if anything what, for your services.

402 Answer to cross 1st. I don't now remember how many sections of school lands in Texas I applied for in my own name, but know positively that it did not exceed the limit allowed by law. I completed the purchase, however, of only three and one-half sections, to wit, sections 20, 62, & 148, bl'k D, Stonewall county, and section 82 (320 acres), bl'k C, Knox county. It is impossible for me to state the same as to the applications made by me as agent for others or to name all the principals, as I kept no record of them. I had authority from my principals, or from somebody for them, before acting, either verbal or in writing. I had no interest in the purchases and I was paid nothing for my services.

Cross 2nd. Do you not know, as a fact, that on the 28 August, 1882, applications were made to the surveyor of Shackelford county, in the name of Margaretta Rhomberg, for the purchase of surveys numbered 76, 116, 68, 96, 64, and 62, as otherwise described in the pleadings and direct interrogatories, and on the same day, in the name of F. M. Robinson, for the purchase of sections numbered 122, 162, 120, and 46 of so-described lands, and that the surveyor's fees were paid for the filing and recording

403 of said applications, and that said applications were recorded by said surveyor on the said 28 August, 1882, and do you not know that no further payments were ever made on account of said applications or obligations given, and that the same were abandoned by the purchasers?

Answer to cross-int. 2d. I am acquainted with the facts set forth in cross-int. 2 and know them to be true.

Cross 3d. Is it not true that no record of the abandonment of such purchases was ever made either by the said Margaretta Rhomberg or the said F. M. Robinson or by anybody for them, and that no notice of such abandonment was given before the expiration of ninety days from the recording of said applications or before the making of the subsequent applications for the same lands by Frank Robinson and Maggie L. Rhomberg to the surveyor of said county or his deputies or to the public or to anybody else? And if you state there was a record of such abandonment or such notice given, then you will fully describe the same and state when and where it was given and who by and who to.

Ans. to cross 3d. I know that the facts set forth in cross-int. 3 are true, but would state further that it was not customary to record or give notice of the abandonment of applications, that it
404 was not required by law, and that I never yet heard of a single instance in which it was done by anybody.

Cross 4th. Who were Margaretta Rhomberg, Maggie L. Rhomberg, F. M. Robinson, and Frank Robinson? Where did they live in 1882? What was the age of each of them? How were they related to each other and to you? Where do they live now? When did you get acquainted with them? When and how were you made their agent, and what to do and how were you to be paid, and who furnished the money to pay for the lands? Had you not made several applications during same year to purchase the same lands in the names of other persons; and, if so, how many and in the names of what persons, and were not each and all of said applications abandoned at the end of ninety days without making the first payments or doing anything else required by law to be done after the recording of said applications; and did you not, as agent for other and different parties, cause other applications for said lands to be filed up to and including said 28 of August; and did you not make and renew said applications, including the one of the 28 of August, 1882? Did you not do so to keep other persons from pur-
405 chasing said lands? You will explain why you did not follow up each of said applications to purchase said lands.

Answer to cross 4th. Margaretta Rhomberg, Maggie L. Rhomberg, F. M. Robinson, and Frank Robinson were each and all of them *bona fide* living persons and entitled to and eligible in every respect to purchase school lands from the State of Texas under the laws of — governing such sales. Three of them lived in Dubuque, Iowa; the other in Chicago, Ill. I cannot state their exact age, but don't think that any of them was under forty years of age, certainly not under thirty-five. The husband of Margaretta Rhomberg was my brother, and we were distantly related to the husband of Maggie L. Rhomberg. Neither of said Robinson- were related to me or to Margaretta or Maggie L. Rhomberg, nor were they, as far — I know, related to each other. Margaretta and Maggie L. Rhomberg still reside in Dubuque. Of the said Robinson-, one is dead and the whereabouts of the other is unknown to me. I don't now remember

just when I got acquainted with them, but I knew them for some time before any of said applications were made. I cannot state minutely when & how I became their agent. I was spending most of my time in Texas during that period, but visited the
406 North occasionally. I had a great deal of faith in the future of Texas; thought it would grow rapidly in wealth and population and considered investments in lands at the price and upon the terms at which the State was then offering them desirable, safe, and profitable. I confiding my views to many of my relatives, friends, and acquaintances and advised them to invest in Texas lands. Quite a number of them did so, and, as I was making my headquarters in Texas & could, without much inconvenience to myself, look after their interests, the most of them had me attend to the purchases for them; this I did without demanding or expecting any remuneration or any interest in the lands. I kept no record of these matters and have no data at hand that would enable me to state definitely just yet when I became agent for any of these parties. I was to apply for the lands, pay the surveyor fees, and make first payment to the State treasurer. I was not to receive any pay myself at all. The parties for whom I was acting furnished the money to pay for the lands. I had made several applications during the same year to purchase the same lands in the name of and for other persons. I don't now remember how many nor can I recall names of the persons. Each and
407 all of said applications were abandoned at or before the end of ninety days without making first payments. In one or two instances, however, payment was tendered the State treasurer, but refused by advice of the land commissioner because applicants had transferred their files to other persons. Applications on said lands were made by or through me up to and including said August 28th. All of said files, including those of August 28th, 1882, were not renewals, but were for different persons in each and every instance. These different applications were not intended to keep other people from purchasing said lands, that being impossible, as the surveyor's office was open to everybody, and it was merely a question of first come, first served. They were intended, however, to procure said lands for people that I was representing. I don't now remember how many such applications there were, nor do I recollect the reason in each case why the application was not followed up. I know that one or two of said applications were rejected by the State treasurer upon the tender of the first payment because the applicants had transferred their applications. Some of said files were abandoned, I believe, because the applicants were not satisfied with the lands. The selection of the lands was usually left
408 to my discretion by the people for whom I was acting, but I always obtained, when it was possible to do so, a description of the lands covered by their applications and submitted it to them. When such description did not meet with their approval I was instructed to abandon these applications or so many of them as covered the land that was not satisfactory. This, I think, was the reason of the abandonment of some of said applications on said

lands in Shackelford county. The applications of Margaretta Rhomberg and F. M. Robinson were not followed up because it was impossible to do so, owing to the refusal of the first payment by the State treasurer because said applications were not accompanied by powers of attorney.

Int. 5. Did you not, under date November 22, 1882, write a letter addressed to Messrs. Jacobs & Fisher, Albany, Texas, in which you said: "I tendered the treasurer payment on my Shackelford county lands, but he said he could not accept same on account of instructions from Com'r Walsh not to accept payment on any files filed as agent unless accompanied by power of attorney from party whom agent is representing. We shall certainly let you handle our lands in that vicinity as soon as we are ready to throw them on the market. I enclose you 18 applications for refiling, and also
409 draft for $36—$18 for surveyor's fees and $18 for your services. The old file expires on Sunday next. You will therefore probably have to refile on Saturday. Trusting that you will give this matter your prompt attention, I remain yours truly. (Signed) J. A. Rhomberg." You will state whether the sections now in controversy were not included in the 18 sections mentioned in said letter. If they were not, then state the numbers of the 18 sections therein referred to.

Answer to cross 5. I believe that I wrote such a letter. My impression is that the sections in controversy were included in said 18 sections, and that they were the identical sections referred to in said letter on which payment had been refused by the State treasurer because not accompanied by powers of attorney, being the sections covered by the applications of said Margaretta Rhomberg and F. M. Robinson.

Cross 6th. Did you not, under date of December 3d, 1882, write a letter addressed to Messrs. Jacobs & Fisher, Albany, Texas, in the words following, to wit:

"GENTLEMEN: Yours of yesterday at hand. I would rather not put my lands in your county on the market just yet, and prefer to hold them rather than sell for less than $2 per acre; will not forget you when I get ready to sell. The files were duly received,
410 & I am much obliged to you for your prompt attention to the same.

Yours respectfully,
(Signed) J. A. RHOMBERG."

Please say what lands you referred to in this letter. Did you not have reference to the eleven sections in controversy in this suit? If you then intended to hold them for $2 per acre, why were they sold for so much less shortly afterwards? Is it not a fact that the conveyances down to the defendant in this suit were mere pretences?

Answer to cross 6th. Such a letter was, I believe, written by me in response to a letter received from said Jacobs and Fisher, of which originals is here attached, marked C. The lands referred to in said

letter were all the lands represented by me in Shackelford county, as I understood by the several letters received from said Jacobs & Fisher, originals of which are hereto attached, marked A, B, C, & D; that they wanted to sell all lands for which I was agent. Reference was not had to the sections in controversy, but they were included. I have no knowledge of any sale of the lands in controversy. Shortly afterwards the first sale to me known was made, about two and one-half years afterwards. By two dollars an acre was meant $1.05 to the owner of the lands and 95c. to the State of Texas—that is, party buying the land was to have the same free of incum-
411 brance for two dollars per acre, or must assume indebtedness due the State and pay seller the difference between such indebtedness and two dollars per acre. There was considerable of a demand for lands at this time from cattle men, who were paying good prices, and these lands particularly seemed to be so anxiously sought after, as is shown by letters from said Jacobs and Fisher attached thereto, marked A, B, C, & D, that the parties I was representing, as well as myself, supposed they would sell for two dollars per acre. Two and one-half years later, however, when the first sales of any of the lands in controversy of which I have any knowledge was made, lands in the western part of the State, owing principally to the depressed state of the cattle business, were but a poor and slow sale. Besides, interest had accumulated on said purchases to something like one hundred dollars per section, which interest, as well as the 95c. per acre still due the State, were, I believe, assumed by the grantees, in addition to paying the consideration expressed in the conveyance; and, furthermore, it is my belief that said Maggie L. Rhomberg and Frank Robinson, who had already been greatly harassed in their efforts to defend and maintain their rights in said lands, rather than be drawn into litigation,
412 sold them at a lower price than they would otherwise have done. If said conveyances or any of them were pretences, I did not know it and am not aware of it now.

Cross 7th. Did you not, under date of October 10, 1882, write a letter, addressed to Jacobs & Fisher, Albany, Texas, in which you said:

"GENTLEMEN: Your favor of 5th inst. rec'd. I am perfectly willing to have you act as agents for my lands in Shackelford, attend to the payment of taxes, &c. I hardly think it advisable, though, to dispose of any of it yet, but reckon it better to hold on awhile longer. You may, however, at any time submit any offer that you may receive for it or a part of it. There are about 14 or 15 sections on which first payment has not yet been made & on which, if I thought it safe, I would refile, so as to run them into the new year, thus delaying entrance for taxes and saving interest. I don't want to run any chances, however, & unless absolutely safe I will make payment on them before they run out. What do you think about it? If you could conveniently assist, there would be no difficulty in doing so, of course.

Yours truly,

(Signed) J. A. RHOMBERG."

What offices did said Jacobs and Fisher then hold? Was not one of them county surveyor of Shackelford county, Texas? Did you propose to them to assist you in so manipulating said lands
413 as to make the State lose its taxes, as well as its interest upon the purchase-money, in your character of agent and for the benefit of a principal or in your own interest?

Answer to cross 7th. I have no recollection of writing or dictating any such a letter. It may have been written, however, by my clerk, who was attending to most of my correspondence and the clerical work in *in* connection with the lands that I was representing. The offices held by said Jacobs and Fisher at that time were those of county judge and county surveyor One of them was county surveyor of Shackelford county. One of them, I think, was deputy surveyor of said county. All my correspondence and dealings with said Jacobs and Fisher was had with them in their capacity as land agents and not as county officers. Any advice or assistance that may have been asked of them was as land agents and not as county officers. While I cannot now recall of any effort ever being made that had in view a saving of taxes or interest or both, if such was ever contemplated, it was certainly to have been on account of and for the people I represented and not for myself.

Cross 8th. Did not 14 or 15 sections referred to in said letter include the very sections in controversy in this suit? If they did not, please give the numbers of the sections they did embrace. What as-
414 sistance did you want or expect from Jacobs & Fisher to accomplish your proposed object of delay, &c.? Explain how it was if they would assist there would be no difficulty. What were the services performed by Jacobs & Fisher, outside of filing and recording your applications to purchase, for which you sent them money?

Answer to cross 8th. Some —, if not all, the sections in controversy must have been included in said 14 or 15 sections, because I was not representing as many as 14 or 15 sections exclusive of them in Shackelford county. How many there were of each I cannot say, having no data at hand for reference. I think that said letter must have been written more for the purpose of obtaining advice and information than for anything else; at any rate, I have — recollection of any effort being made by or through me to delay entrance for taxes or to save interest. I would say, too, that the three letters quoted in cross-interrogatories 5, 6, and 7, purported to have been written & sent by me, are but a small portion of the letters actually sent by or through me to said Jacobs & Fisher, and that it is my candid belief that if the remainder of said letters or a portion of them were produced they would explain many of the fore-
415 going matters, and, furthermore, show more clearly and distinctly in what manner I was acting for the people that I represented, and how I was connected with said applications and lands. I cannot imagine what assistance was expected from said Jacobs and Fisher. The only possible way that I am aware of by which such a delay could be effected was by abandoning old applications and making new ones, thus gaining ninety days, the life of the new applications. This, however, was not and could not have

been attempted with the applications in controversy, as said Margaretta Rhomberg and F. M. Robinson, who then held said applications, were both willing and anxious to follow up their files and through me tendered first payments to the State treasurer, which tenders were refused because I was without the required powers of attorney. No money was ever sent said Jacobs and Fisher, either by or through me, except that sent them for filing and recording applications. The amount sent them was one dollar per application for surveyors' fees and one dollar per application for their services. Said fee for their services was not sent voluntarily, but was expected and demanded by them.

Cross 9th. How were you paid for your agency in conducting the purchases of the lands in controversy, and what was you
416 paid—who by and when? Answer fully and in detail.

Answer to cross 9th. I was not paid in any way for my agency in conducting the purchases of the lands in controversy. I was paid nothing; nobody paid me. I was never paid.

Cross 10th. Have you stated fully and candidly everything about the purchasers of said lands; told the whole truth and concealed nothing? If the contrary, please supply all omissions in your answer to this interrogatory.

Answer to cross 10th. Yes.

(Signed) J. A. RHOMBERG.

STATE OF IOWA, }
Dubuque County. }

Subscribed and sworn to before me this twenty-fourth day of November, A. D. 1888, by J. A. Rhomberg, known to me to be the identical person whose signature is affixed to the foregoing answers.

(Signed) F. G. BRAME,
[SEAL.] *Notary Public of Iowa in and for Dubuque County.*

Cross-interrogatories are signed "J. R. Fleming and Leake & Henry, solicitors for plaintiff." Both cross & direct int'g's, with answers thereto, are endorsed: "Filed January 25th, 1889. A. J. Houston, clerk, by W. L. McDonald, deputy."

417 In the United States Circuit Court for the Northern District of Texas, at Dallas.

I do hereby certify that the foregoing is a full, true, and correct transcript of cross-interrogatories propounded by the plaintiff to J. A. Rhomberg, witness for the defendant in case No. 137 and styled The Monroe Cattle Company *vs.* A. W. Becker, as appears from the records of said court now in this office.

Witness the seal of said circuit court, at Dallas, Texas, and the name of the clerk thereof, this 19 day of September, 1888.

[SEAL.] A. J. HOUSTON,
Clerk of said Court.

[Endorsed:] No. 137. In the U. S. circuit court, northern district of Texas, at Dallas. The Monroe Cattle Co. *vs.* A. W. Becker. Cross-interrogatories to J. A. Rhomberg, witness for defendant. Opened and filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

418 H. C. Jacobs, county surveyor. J. L. Fisher, county judge.

Office of Jacobs & Fisher, real estate and general tax agents.

ALBANY, TEXAS, *Oct.* 5, 1882.

Mr. J. A. Rhomberg.

DEAR SIR: We would like to act as agents for you and control & manage your lands in this county. We think we can effect a sale of all in a body. If they are for sale and you will give us the agency and price we will do the best we can for you. We think we can make a cash sale, if any, the purchaser paying off your obligations in Austin at such time as he may seem proper under the law, paying you your advance over 1.00 in cash.

Hoping to hear from you soon, we are very respectfully,

(Signed) JACOBS & FISHER.

A.

Endorsed: Filed January 25th, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

419 H. C. Jacobs, county surveyor. J. L. Fisher, county judge.

Office of Jacobs & Fisher, real estate and general tax agents.

ALBANY, TEXAS, *Nov.* 27, 1882.

J. A. Rhomberg, Austin, Tex.

D'R SIR: Replying to yours of 22d inst. we enclose applications recorded by the surveyor and all O K except section No. 4, in block No. 12, T. & P., which the surveyor notified you before was already taken and paid on, and the surveyor'- books show that sec. No. 222 has already been paid on by one of your men, A. W. Armstrong, but we got him to enter your file on it for fear there might be a mistake in the entry, as it is in the handwriting of his deputy. We would like to attend to your land business here; think we could sell this land soon at $1.50 per acre.

Yours, &c.,

(Signed) JACOBS & FISHER.

B.

Endorsed: Filed January 25th, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

420 H. C. Jacobs, county surveyor. J. L. Fisher, county judge.

Office of Jacobs & Fisher, real estate and general tax agents.

ALBANY, TEXAS, *Dec.* 1*st*, 1882.

J. A. Rhomberg, Esq., Austin, Tex.

D'R SIR: Please let us know if you will sell your Shackelford Co. lands. We are about to close out a large body adjoining yours at about $1.50 per acre, and probably $1.60. Let us know at once if you want yours to go in, as the trade will, we think, be closed in ten days.

Yours, &c., JACOBS & FISHER.

C.

Endorsed: Filed January 25th, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

421 H. C. Jacobs, county surveyor. J. L. Fisher, county judge.

Office of Jacobs & Fisher, real estate and general tax agents.

ALBANY, TEXAS, *Dec.* 18, 1882.

J. A. Rhomberg, Austin, Tex.

D'R SIR: We have close- Geo. F. Morer land out at 1.60. Let us know at once whether we can close yours out at same price or not. We think we can put it in at those figures.

Respectfully yours, &c.,

(Signed) JACOBS & FISHER.

D.

Endorsed: Filed January 25, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

422 In the Circuit Court of the United States, Northern District of Texas, at Dallas.

THE MONROE CATTLE COMPANY, Complainant, *vs.* A. W. BECKER, Defendant. } No. 137. In Chancery.

Interrogatories propounded to A. W. Becker, the defendant in said cause, who resides in the city of Chicago, State of Illinois, a witness in his own behalf.

In the Circuit Court of the United States, Northern District of Texas, at Dallas.

MONROE CATTLE CO., Pl't'ffs, *vs.* A. W. BECKER, Defendant. } No. 137. In Chancery.

STATE OF ILLINOIS, *County of Cook*, } *ss:*

By virtue of the stipulations endorsed upon the interrogatories,

which are hereto attached and are entitled in the above-entitled cause, I, Edgar B. Tolman, a notary public in and for the county of Cook and State of Illinois, have caused to come before me, at my office, in the city of Chicago, county and State aforesaid, A. W. Becker, the witness therein named, a resident of the city of Chicago, county of Cook and State of Illinois, of full legal age, who, being by me duly sworn to speak the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories in the said case propounded to him, proceeded to answer the same as follows:

423

Int. 1. State your name, place of residence, business or occupation, and the relation you bear to this cause.

In answer to interrogatory first the witness says: My name is A. W. Becker; reside in Chicago; am connected with the wholesale clothing house of G. Becker; am defendant in this case.

Int. 2. In this suit the question at issue is the title and ownership of eleven sections of State school land situated in Shackelford county, State of Texas, and all located by virtue of certificates issued by the State of Texas to the East Texas Railroad Company, the number of each survey and the number of the certificate by virtue of which it was located being as follows: Survey No. 46, certificate No. 158; survey No. 120, certificate No. 255; survey No. 122, certificate No. 256; survey No. 116, certificate No. 253; survey No. 62, certificate No. 166; survey No. 64, certificate No. 167; survey No. 66, certificate No. 168; survey No. 76, certificate No. 173; survey No. 162, certificate No. 21–363; survey No. 68, certificate No. 169, and survey No. 96, certificate No. 200.

424

The said surveys No-. 152, 122, 120, and 46 are patented to you as assignee of Frank Robinson, whose application to purchase the same was filed and recorded in the office of the surveyor of Shackelford county, State of Texas, on November 25, 1882, and the said surveys No-. 66, 68, 76, 62, 96, 64, and 116 are patented to you as assignee of Maggie L. Rhomberg, whose application to purchase the same was filed and recorded in the office of the surveyor of Shackelford county, State of Texas, on November 25, 1882.

The surveys in name of Frank Robinson were transferred and conveyed by said Frank Robinson to R. S. Hoglen by his deeds of date March 5, 1885, in which the consideration expressed is $132.00 per section, a separate deed being made for each section.

The surveys in the name of Maggie L. Rhomberg were transferred and conveyed by said Maggie L. Rhomberg, joined by Jacob Rhomberg, her husband, to one John H. Klein, by their deeds of February 28, 1885, in which the consideration expressed is $132.00 per section, a separate deed being made to each section.

425

These surveys were transferred and conveyed by said John H. Klein to R. S. Hoglen by his deeds of date of March 13, 1885, in which the consideration expressed is $475.00 per section, a seperate deed being made to each section.

The entire eleven sections were conveyed to you by said R. S. Hoglen by his deeds of date April 28, 1886, in which the considera-

tion expressed is $640.00 per section, a separate deed being made for each section.

The plaintiff claims title to said surveys No-. 122, 68, 66, 64, 46, 120, and 62, as assignee of F. B. Jacobs, whose applications to purchase the same was filed and recorded in the office of the county surveyor of Shackelford county on January 2, 1883, and claims title to said surveys No-. 76, 162, 116, and 96, as assignee of F. B. Jacobs, whose applications to purchase the same was filed and recorded in the office of the county surveyor of Shackelford county on January 2, 1883, and claims title to said surveys No-. 76, 162, 116, and 96, as assignee of Malinda Fisher, whose application to purchase the same was filed and recorded in the office of the surveyor of Shackelford county, State of Texas, on January 8, 1883. You will now answer the following interrogatories relating to the transactions just stated:

First. Had you at the time or have you since had any personal knowledge or information of the facts and circumstances
426 attending and existing at the time of the applications to purchase said lands made in the name of said Maggie L. Rhomberg and Frank Robinson? If yea, set forth such information fully, stating all that you know concerning said applications, and whether you know any fact connected with said applications except as shown by the papers and records, setting forth fully all such facts.

Second. State all that you know about the transfer of said sections of land by Maggie L. Rhomberg and her husband to John H. Klein. Do you know, beyond the recitals in the deeds, what consideration was actually paid for this conveyance? If yea, state the same fully.

Third. State all that you know about the transfer made by said Klein to said R. S. Hoglen. State, if you know, the actual consideration paid for this conveyance. If you know any facts outside of the recitals in the deeds set the same forth fully.

Fourth. State all that you know about the conveyance of said sections in the name of Frank Robinson by said Frank Robinson to said R. S. Hoglan. If you know anything about the amount of consideration actually paid by said Hoglan, outside of the recit-
427 als in the deeds, you will set forth the same fully in your answer.

Fifth. Were you present when any of the matters and transactions mentioned and referred to in the four preceding interrogatories occurred, and have you any knowledge of the facts and circumstances attending the said several transactions beyond what is contained in the instrument and papers relating thereto? If you were present at any or all of said matters and transactions you will please explain fully all that occurred. If you have any knowledge or information of said matters beyond the recitals in the instruments and papers you will please set forth the same fully.

Sixth. You will now please state the facts and circumstances of your purchase of said lands from said R. S. Hoglen. What consideration was actually paid? Was any other person or persons in any way interested in the sale and conveyance of said sections of land to you except your vendor, R. S. Hoglen? If yea, name such per-

son or persons and state the interest of such person or persons in said lands or in said sale. Was any other person or persons in any way interested with you in the purchase of said lands or in the conveyance thereof to you? If yea, name such person or persons,
428 and state what interest such person or persons may have or may have had therein.

Seventh. State whether or not J. A. Rhomberg had any interest, right, or claim in said lands or in any part thereof when the same were conveyed to you. If he had such interest, set forth the same fully in your answer.

Eighth. State whether said J. A. Rhomberg now has any interest, right, or claim in said lands or in any part thereof, and whether he has had any such interest, right, or claim therein since the same were conveyed to you. If he has or has ever had such interest, right, or claim therein, you will please set forth and state the same fully in your answer.

Ninth. State, if you know, whether or not said J. A. Rhomberg ever at any time had any interest, right, or claim in said lands or in any part thereof; and if you answer that he had such interest, right, or claim, then set forth the same fully in your answer.

Tenth. Who is now the owner of said lands? And state whether any other person or persons has or have any interest therein.

In answer to interrogatory second the witness says:

First. I had no personal knowledge or infor*for*mation at the time, nor have I had any since, of the application to purchase said
429 lands in the name of Maggie L. Rhomberg and Frank Robinson except as shown by the papers and records.

Second. I know nothing beyond the recitals in the deeds.

Third. I do not know the actual consideration paid. I know no facts outside of the recitals in the deeds.

Fourth. I know nothing outside of the recitals in the deeds.

Fifth. I was not present when any of said transactions took place, and I have no knowledge of any facts or circumstances attending the same except as stated in the instruments and papers related thereto.

Sixth. The consideration actually paid was six hundred and forty dollars per section. I know of no other person or persons that in any way were interested in the sale and conveyance of said land except said R. S. Hoglen. No other person was or were interested with me in any way in the purchase or in the conveyance to me of said lands.

Seventh. J. A. Rhomberg had no interest, right, or claim, as far as I know, in said lands or any part thereof when the same were conveyed to me.

Eight-. J. A. Rhomberg at the present time has no interest,
430 right, or claim in said lands or any part thereof, and he has not had such interest, right, or claim since they were conveyed to me.

Ninth. I do not know whether or not said J. A. Rhomberg ever at any time had any interest, right, or claim in said — or in any part thereof.

Tenth. I am the present owner of said lands individually, solely, and absolutely; no other person or persons has or have any interest in them or any part of them.

Int. 3. When you purchased said lands and at the time you made the final payments thereon had you any information or notice of the fact that on February 28, 1882, applications for the purchase of these lands were made to the surveyor of Shackelford county, Texas, in the name of F. Becker, S. L. Rhomberg, and Conrad Becker, and that such applications were forfeited by failure to make the first payment and otherwise to comply with law? Had you, at the times referred to, any information or notice of the fact that on May 29, 1882, applications for the purchase of these lands were made to the said surveyor in the names of J. M. Beecham and M. B. Thompson, and that such applications were forfeited for failure to make payments and to comply with the law? Had you,
431 at the times referred to, any information or notice of the fact that on August 28, 1882, applications for the purchase of these lands were made to the surveyor of said Shackelford county in the names of Margaretta Rhomberg and F. M. Robinson, and that they failed to make first payment within the time required by law and forfeited the said applications? Had you, at the times referred to, any information, notice, or knowledge that any application for the purchase of these lands or any part thereof had ever been made, filed, or recorded before the applications of the said Maggie L. Rhomberg and Frank Robinson? If yea, state all the knowledge and information you had of such matters. When were you first informed that such applications had been made and how were you so informed? Did you have any interest in or connection with any of said applications?

In answer to interrogatory third the witness says: Of the different applications referred to in this interrogatory and of any and all applications made or said to have been made for said land prior to those of Maggie L. Rhomberg and Frank Robinson, I had no
432 knowledge when I purchased said lands or when I made final payments thereon. I was first informed of them at the filing of this suit. I had no interest in or connection with any of said applications.

Int. 4. Did you, at the time of your purchase of said lands or at the time of your payment of the principal and interest thereon to the State treasurer of the State of Texas, have any information or knowledge of the connection of J. A. Rhomberg with any of these transactions except as agent of the said Maggie L. Rhomberg and Frank Robinson in the purchase of said lands, as is shown in the records of the said State treasurer's office and the general land office? If you had any knowledge or information of the acts of the said J. A. Rhomberg in this respect beyond what is shown in the records of said offices you will set forth the same fully. Did you have any connection or interest in any of the acts of the said J. A. Rhomberg in reference to these lands or any other lands? Did you have any knowledge or information of such acts? When did you first

have knowledge or information of the charges against said J. A. Rhomberg contained in the plaintiff's bill?

In answer to interrogatory fourth the witness says: I never
433 at any time had any information or knowledge of any connection of J. A. Rhomberg with any of these transactions beyond what is shown by the records. I had no connection or interest in any of the acts of said J. A. Rhomberg in reference to these or any other lands. I had no knowledge or information of said acts. My first information of them was at the filing of this suit.

Int. 5. Why did you purchase said lands? What amount of money did you pay therefor and whose money was paid? What amount of money did you afterward pay to the State treasurer and whose money was so paid?

In answer to interrogatory fifth the witness says: I bought said lands as an investment. The money paid therefor was one dollar an acre and it belonged to me. The money afterwards paid to the State treasurer was between $700.00 and $800.00 per section. It belongs to me.

Int. 6. What taxes, if any, have you paid on said lands since your purchase of the same? Were such taxes paid to the comptroller of the State or to the county collector of taxes? Did such payments include State, school, and county taxes? Did you
434 receive receipts for the taxes so paid? If yea, attach receipts to your answer and designate them for identification.

In answer to interrogatory sixth the witness says: I paid all taxes due on said lands in full to the comptroller, as is fully set forth in accompanying receipts, Nos. 1771 and 2654.

Said receipts offered in evidence by the witness and hereto attached and marked for identification Exhibit "A" and Exhibit "B," respectively.

(Direct interrogatories are signed by "Robertson & Williams, solicitors for the defendant.")

Cross-Interrogatories Propounded by Plaintiff to A. W. Becker.

Cross 1st. Do you know J. A. Rhomberg? If so, how long have you known him and where?

In answer to cross-interrogatory first the witness says: I know J. A. Rhomberg; have known him for 15 or 20 years at Dubuque, Iowa.

Cross 2. Did you ever have any conversation or transaction with him about said land? And, if you did, state what it was.

In answer to cross-interrogatory second the witness says:
435 I never had one word of conversation with him nor transaction of any kind about said lands.

Cross 3. Do you not know that said J. A. Rhomberg has at some time had a pecuniary interest in said lands? Explain what it was. Do you not know that he has now a pecuniary interest in them, or that he expects to derive pecuniary advantage from them? Explain what it is.

In answer to cross-interrogatory third the witness says: I don't

know that said J. A. Rhomberg at any time ever had a pecuniary interest in said lands. I do not know that he now has a pecuniary interest in them, but I do most positively know that he has not any pecuniary interest in them. If he expects to derive some pecuniary advantage from them, I do not know what or how.

Cross 4. How many sections in all of Texas school lands have you been interested in? And explain when and how you acquired your interest. State what the numbers of the sections and blocks are and in what counties they are situated, and state what interest in them J. A. Rhomberg had and what connection or agency he had with them.

436 In answer to cross-interrogatory fourth the witness says: I have been interested in nineteen sections of Texas school lands—seven sections in Kent county, filed as by me in 1882 or 1885, all sold before the bringing of this suit, and of which I have no data at hand to give description; twelve sections in Shackelford county, of which eleven are involved in this suit, the other being section 222, East Texas R. R. In said lands owned by me J. A. Rhomberg never had any interest or connection that I am aware of, except such as may be shown by the records.

Cross 5. If you are related to J. A. Rhomberg, state how, and state what your financial worth is.

In answer to cross-interrogatory fifth the witness says: I am not related to J. A. Rhomberg. My financial wealth, aside from said twelve sections of land in Shackelford county, is about $18,000.00 (eighteen thousand dollars). Said lands are assessed to me at a valuation of $2.00 per acre.

(Signed) A. W. BECKER.

Which answers I cause to be reduced to writing, and they were sworn to and subscribed before me, at my office, in the city of Chicago, county of Cook and State of Illinois, on the 11th day
437 of December, A. D. 1888, by the said A. W. Becker. I also certify the two papers hereto attached, marked Exhibit "A" and Exhibit "B" respectively, are the identical papers offered in evidence by the said witness, A. W. Becker, in connection with and as part of his answers to direct interrogatory sixth.

In witness whereof I have hereto set my hand and official seal.

(Signed) EDGAR B. TOLMAN,
[SEAL.] *Notary Public, Cook County, Illinois.*

(The cross-interrogatories are signed "Leake & Henry, sol's for pl'ff." The cross-interrogatories, with the answers thereto, are endorsed: "Filed Jan'y 24, 1889. A. J. Houston, clerk, by W. L. McDonald, deputy.")

We hereby waive time, notice, and commission, and consent that the answers of the witness may be taken to the original direct and cross interrogatories before any officer authorized to take and return depositions under the laws of the State of Texas, waiving matters of mere form in taking and returning, but not waiving any matters of substance.

(Signed) LEAKE & HENRY,
25—1227 *Solicitors for the Plaintiff.*

438 Form No. 44.

EXHIBIT A. Edgar B. Tolman, Notary Public.

Receipt No. 2654. Amount, $172.80.

Received of A. W. Becker, for himself, the sum of one hundred & seventy-two & $\frac{80}{100}$ dollars, being the amount of State, school, and county taxes upon the following-described property for the year designated therein:

Year for which payment is made.	Description.										Taxes.				Memorandum.		
	County.	Abst. No.	Cert. No.	Survey No.	New abst. No.	Original grantee.	No. acres.	No. of lot.	No. of blk.	Division.	State —.	School tax.	County tax.	Total tax.	Form.	Page.	Line.
1887	Shackelford	1454	166	62	1587	E. T. R. R	640										
"	"	1455	167	64	1588	"	640										
"	"	1456	168	66	1589	"	640										
"	"	1457	169	68	1591	"	640										
"	"	1405	173	76	1590	"	640										
"	"	1406	200	96	1592	"	640										
"	"	1407	253	116	1586	"	640	.....	.....	.....	38 40	19 20	115 20	172 80	C	1	19
"	"	1453	158	46	1580	"	640										
"	"	1458	255	120	1581	"	640										
"	"	1459	256	122	1582	"	640										
"	"	1408	21-303	162	1583	"	640										
"	"	1409	21-303	222	1584	"	640										

[Written across the face:] Registered. Walter Swain, receiving clerk.
Office of comptroller, Austin, Texas, Dec 31st, 1887.

D. H. WALSH, *Tax Clerk.*
N. E. L.

STEPHEN H. DARDEN,
Chief Clerk, Comptroller.

EXHIBIT B. Edgar B. Tolman, Notary Public.

Receipt No. 1771.

Amount, $172.80.

Received of A. W. Becker, for himself, the sum of one hundred and seventy-two & $\frac{80}{100}$ dollars, being the amount of State, school, and county taxes upon the following-described property for the year designated herein:

Year for which payment is made.	Description.										Taxes.				Form.	Page.	Line.
	County.	Abst. No.	Cert. No.	Survey No.		Original grantee.	No. acres.	No. of lot.	No. of block.	Division.	State tax.	School tax.	County tax.	Total tax.			
1886	Shackelford	.....	167	64	.....	E. T. R. R.	640										
"	"	.....	166	62	.....	"	640										
"	"	.....	168	66	.....	"	640										
"	"	.....	169	68	.....	"	640										
"	"	.....	173	76	.....	"	640										
"	"	.....	209	96	.....	"	640										
"	"	.....	253	116	.....	"	640										
"	"	.....	258	46	.....	"	640										
"	"	.....	255	120	.....	"	640										
"	"	.....	256	122	.....	"	640										
"	"	.....	21-363	162	.....	"	640										
"	"	.....	21-393	222	.....	"	640										
								.....	.....	.....	38 40	19 20	115 20	172 80	C	1	20

[Written across the face:] Registered. R. W. Finley, receiving clerk.
Office of comptroller, Austin, Texas, Dec. 27, 1886.

D. H. WALSH, *Tax Clerk.*
PASCHAL.

WM. J. SWAIN, *Comptroller.*

440 (Exhibits "A" and "B" are respectively endorsed: Filed January 24, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.)

United States Circuit Court, Northern District of Tex., at Dallas.

THE MONROE CATTLE COMPANY
vs.
A. W. BECKER. } In Chancery.

Interrogatories propounded by pl'ff to Frank Pate and Alexander Spears, residents of Shackelford county, Texas.

United States Circuit Court, Northern District of Texas, at Dallas.

THE MONROE CATTLE CO.
vs.
A. W. BECKER. } In Chancery.

Answers and depositions of Alexander Spears to the accompanying interrogatories propounded to him in the above-entitled cause, taken before the undersigned authority in accordance with the accompanying acceptance and waiver.

Int'g. 1st. This suit is the following-named surveys of land lying in Shackelford county, Texas: Surveys No. 46, 120, 122, 116, 62, 64, 66, 76, 162, 68, and 96, each containing 640 acres, surveyed by virtue of land certificates Nos. 158, 255, 256, 253, 166, 167, 168, 173,
441 21–363, 169, and 200, issued by the State of Texas to the East Texas Railroad Company. Do you know said lands, and how long have you known them?

Ans. to Int. 1. I have no special knowledge of the particular surveys mentioned as separate and distinct surveys, but have known the lands and part of the county where they are situated since the spring or summer of 1883 as the lands belonging to the Monroe Cattle Company of Albany, Shackelford county.

Int. 2. You will state whether all or any of said lands are or have been improved, enclosed, or occupied, and, if any, then state how much of them have been enclosed, improved, or occupied, and describe how they have been improved, enclosed, or occupied, and when and by whom.

Ans. to Int. 2. These lands were enclosed under wire fence by the Monroe Cattle Co. in the spring or Summer of 1883, and have been used since for grazing purposes. I don't know of any improvements on any of said sections, except perhaps fence on several of them. Said company has stock on these lands except as below, and have men employed to look after such stock subsequent to the date above mentioned. I don't remember when sections 62, 64,
442 & 116 were enclosed by Holstein Bros. in their pasture.

Int. 3. State fully all you know about the occupancy and improvements and who by, and when and for how long, and state by whom or for whom said lands were held and under what claim of right or title.

Ans. to Int. 3. As to occupancy and improvement see answer next above. Said lands were held by the Monroe Cattle Co. for the company, so far as I know. I don't know anything of the title.

Int. 4. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. to Int. 4. No.

(Direct interrogatories are signed "J. R. Fleming, Leake & Henry, solicitors for pl'ff.")

Cross-interrogatories to said witnesses propounded in behalf of defendant:

X Int. 1. How much land is enclosed in the plaintiff's pasture? Is it not a very extensive enclosure? What is the character
443 of fence used, and how many county roads pass through the enclosure, and how many open gates are there?

Ans. to X Int. 1. The company's lands are enclosed in seven pastures—some as large as 52 sections and as small as 160 acres, the others ranging between these two quantities. The fence used is what is known in this country as a wire fence, and is composed of posts and four steel wires. Section 162 is in a pasture through which a third-class road passes. The gates on this road are kept closed, as are all other gates in the pasture.

X Int. 2. Is there any house on any one of these surveys in controversy; if yea, on which one, and the character and use of such house? Who built it, and for what purpose? Any land in these surveys in cultivation; if yea, in what and since what date cultivated, and who has cultivated same?

Ans. to X Int. 2. I don't know whether there are any houses on any of these lands or not, neither do I know if any of the land in controversy is in cultivation.

X Int. 3. Is it not true that all the enclosure, improvement, and occupation of these sections of land is by a wire fence, enclosing about 100 sections, or some such large number, and the pasturage of cattle in the entire enclosure?

444 Ans. to X Int. 3. These lands, as before stated, are enclosed under several wire fences, enclosing various quantities of land, as above stated, and are used for the pasturage of cattle.

X Int. 4. Have you any stock in the plaintiff company or are you in its employ or related to its officers or managers?

Ans. to X Int. 4. I have no stock in said company; am not in its employ. I am related to the president of the company, he being my cousin by marriage.

(Signed) ALEX. SPEARS.

Sworn to and subscribed before me this Aug. 28, 1888

(Signed) G. M. SMITH,

[SEAL.] *Clerk District Court, Shackelford County, Tex.*,

By SAM'L SPEARS, *Deputy.*

I, G. M. Smith, clerk of the district court in and for Shackelford county, Texas, do hereby certify that the foregoing answers of Alex. Spears were sworn to and subscribed before me by said witness.

Given under my hand and seal of office this Aug. 28, 1888.

[SEAL.] G. M. SMITH,
Clerk Dist. Court, Shackelford County,
By SAM'L SPEARS, *Deputy.*

Answers of J. F. Pate to the Interrogatories Hereto Attached.

445 Int'g. 1st. This suit is about the following-named surveys of land, lying in Shackelford county, Texas: Surveys No. 46, 120, 122, 116, 62, 66, 64, 76, 162, 68, and 96, each containing 640 acres, surveyed by virtue of land certificates No. 158, 255, 256, 253, 166, 167, 168, 173, 21–363, 169, and 200, issued by the State of Texas to the East Texas Railroad Company. Do you know said lands, and how long have you known them?

Ans. to Int. 1st. I have known the lands mentioned in interrogatory 1st for six or eight years.

Int. 3. You will state whether any or all of said lands are or have been improved, enclosed, or occupied; and, if any, then state how much of them have been enclosed, improved, or occupied and describe how they have been improved, enclosed, or occupied and when and by whom.

Ans. to Int. 2nd. All of the lands are enclosed and used for grazing purposes. They are enclosed by a wire fence consisting of posts and four wires. These lands were enclosed by the Monroe Cattle Company about July, 1883, and said company has continuously used said land mentioned in 1st Int. for grazing purposes and have had stock thereon and men employed to look after said stock since July, 1883, except sections 64, 62, and 116, which are in the
446 pasture of Holstein Bros., which is and has been used for like purposes as the balance of said land. The last-named sections were originally enclosed by the Monroe Cattle Company and remained in their enclosure until 1884 or 1885, when said Holstein Bros. enclosed them in their pasture. These lands were exchanged for lands belonging to Holstein Bros. and situated north of the Holstein pasture.

Int'y 3d. State fully all you know about the occupancy and improvement, and who by, and when and for how long, and state by whom and for whom said lands were held and under what claim of right or title.

Ans. to Int. 3d. I don't know anything about the source of their title or the nature of it. See next answer above for balance of this interrogatory.

Int'y 4th. Do you know or can you set forth any other matters or things which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. to Int. 4th. No.

447 *Cross-Interrogatories to said Witnesses Propounded in Behalf of Plaintiff.*

X Int. 1. How much land is enclosed in the plaintiff's pasture? Is it not a very extensive enclosure? What is the character of fence used and how many county roads pass through the enclosure, and how many open gates are there?

Ans. to cross-int. 1st. One pasture contains 52 sections, another contains 45 sections, and another about 43 sections. The company owns other pastures, but none other in which any of the lands in question are situated. It is a wire fence, posts and 4 wires. One county road passes through the pastures containing about 43 sections. No county road passes through any of the other pastures. There are no open gates; all are kept closed.

X Int. 2. Is there any house on any one of the surveys in controversy; if yea, on which one, and the character and use of such house? Who built it and for what purpose? Any land in these surveys in cultivation; if yea, in what, and since what date cultivated, and who has cultivated same?

Ans. to cross 2d. I don't know whether there are any houses on any of the lands in controversy or not; no part of them is in cultivation.

X Int. 3. Is it not true that all the enclosure, improve-
448 ment, and occupancy of these sections of land is by a wire fence enclosing about 100 sections or some such large number and the pasturage of cattle in the entire enclosure?

Ans. to cross-int. 3. No. See answer to cross-interrogatory 1st.

X Int. 4. Have you any stock in the plaintiff company or are you in its employ or related to its officers and managers?

Ans. to cross-int. 4th. I have no stock in said company and am not related to any of its officers. I am employed by said company.

(Signed) J. F. PATE.

I, G. M. Smith, clerk of the district court in and for Shackelford county, Texas, do hereby certify that the foregoing answers of J. F. Pate were subscribed by said witness and sworn to before me this 29th August, 1888.

In witness whereof I have hereunto set my hand on said last date and affixed the seal of said court.

[SEAL.] (Signed) G. M. SMITH,
Clerk District Court, Shackelford Co., Tex.,
By SAM'L SPEARS, *Dep'ty.*

(Direct int'g's are signed "J. R. Fleming, Leake & Henry, solicitors for pl'ff" and cross-int'g's are signed "Robertson & Williams, sol's for def't." Endorsements: Filed January 25, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.)

449 The following acceptance & waiver is endorsed on the interrogatories:

We accept service of within interrogatories and consent for the

answers of the witnesses to be taken by a notary public or clerk of a court of record, without commission, using the original direct and cross interrogatories for that purpose. We waive all objections going to the form or manner of taking or returning the depositions and consent for them to be read at the hearing, subject only to objections going to the substance of the evidence.

(Signed) LEAKE & HENRY, *Sols. for Pl'ff.*
ROBERTSON & WILLIAMS,
Solicitors for Defendant.

In the Circuit Court of the United States, Northern District of Texas, at Dallas.

THE MONROE CATTLE CO. *vs.* A. W. BECKER. } No. 137. In Chancery.

In this cause it is hereby agreed that the patents to the eleven sections of land in controversy in this cause were issued and executed by John Ireland, Governor of the State of Texas, under the seal of the State of Texas, and countersigned by W. C. Walsh,
450 commissioner of the general land office of the State of Texas, attested by the seal of said general land office, as follows:

To the defendant, A. W. Becker, as assignee of said Maggie L. Rhomberg, survey No. 116 on June 2, 1886; said surveys No-. 66, 76, 62, and 64 on July 2, 1886, and said surveys No-. 68 and 96 on January 24, 1887.

Also to defendant, A. W. Becker, as assignee of said Frank Robinson, said survey No. 46 on May 22, 1886; said survey No. 120 on May 27, 1886; said survey No. 122 on June 11, 1886, and said survey No. 162 on July 3, 1886.

(Signed) LEAKE & HENRY,
Solicitors for the Plaintiffs.
ROBERTSON & WILLIAMS,
Solicitors for the Defendant.

The foregoing is endorsed: No. 137. Chancery. Monroe Cattle Co. *vs.* A. W. Becker. Agreement as to issue of patents. Filed Sept. 19, 1888. (Signed) A. J. Houston, clerk.

From the Minutes, January Term, 1889.

THE MONROE CATTLE COMPANY *vs.* A. W. BECKER. } No. 137.

FEBRUARY 13, 1889.

And now, on this day, this cause coming on for final hearing and trial, the complainant, The Monroe Cattle Company, a cor-
451 poration, appearing by its counsel, W. W. Leake, Esqr., and the defendant, A. W. Becker, by his counsel, Robertson

& Williams, Esqrs., and submit said cause and all the issues therein joined to the court, and the court, after hearing and duly considering the bill, answer, evidence, and argument of counsel, is of the opinion that the said complainant, The Monroe Cattle Company, has not shown and established an equitable title to the said eleven sections of land in controversy superior to the legal title vested in defendant, A. W. Becker, by the patents to said lands issued to him by the State of Texas, or of such character as would entitle the said plaintiff to a decree for title to said lands, and that plaintiff is not entitled to the relief as sought and prayed for in its said bill, and that said plaintiff take nothing by its said suit, and that its said bill be, and the same is hereby, dismissed. It is further ordered and decreed that the injunction hereinbefore granted restraining and enjoining the said defendant from further prosecuting his suit, being case No. 1079 on the law docket of this court, and commenced in this court on February 14, A. D. 1887, by the said A. W. Becker, defendant herein, filing his said suit against the said The Monroe Cattle Company, complainant herein, for
452 the recovery of the title and possession of said eleven sections of land, described as follows, to wit, being located in Shackelford county, State of Texas, and in *in* the northern judicial district of Texas, and being of the public-school lands of the State of Texas, and all located by valid certificates issued by the State of Texas to the East Texas railroad, a railroad corporation, said eleven sections being numbered respectively as follows, to wit, 46, 120, 122, 116, 62, 64, 66, 76, 162, 68, and 96, and were located and surveyed by virtue of certificates issued to said East Texas Railroad Company as aforesaid in the order above named, named and numbered as follows, to wit, 158, 255, 256, 253, 166, 167, 168, 173, 21–363, 169, and 200, each section containing six hundred and forty acres of land, and being the same eleven sections of land involved in this cause, be, and the same is hereby, dissolved, and the said defendant shall be no longer restrained from prosecuting his said suit at law.

It is further ordered and decreed that the defendant, A. W. Becker, have and recover all his costs by him in this behalf expended, and that due process for such costs may issue from this court to collect the same.

(Signed) A. P. McCORMICK,
Dist. Judge.

453 From Minutes, February 13, 1889.

THE MONROE CATTLE CO. } 137.
vs.
A. W. BECKER. }

Now, on this day, the 13th day of February, A. D. 1889, complainant, by its attorney, W. W. Leake, Esquire, appears in open court and prays an appeal to the Supreme Court of the United States from the decree of this honorable court this day entered, dissolving the injunction heretofore granted herein and dismissing

the bill of complaint of complainant; which appeal is allowed, with security in the sum of five hundred dollars.

(Signed) A. P. McCORMICK.

454 Leake, Shepard & Miller, office in North Tex. Nat'l Bank building, Dallas, Texas, att'ys-at-law.

In the U. S. Circuit Court in and for the Northern District of Texas, at Dallas, Texas.

THE MONROE CATTLE CO.
vs.
A. W. BECKER.

UNITED STATES OF AMERICA, *ss:*

To A. W. Becker, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, sitting in the District of Columbia, on the second Monday in October next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Texas, at Dallas, Texas, in the fifth circuit, wherein The Monroe Cattle Company is appellant and you are appellee, and show cause, if any there be, why the decree rendered against the said Monroe Cattle Company, appellant in said appeal mentioned, shall not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this the 14th day of February, A. D. 1889.

A. P. McCORMICK,
U. S. Dist. Judge.

Service of the above accepted.

A. W. BECKER,
By ROBERTSON & WILLIAMS,
His Solicitors.

455 [Endorsed:] No. 137, ch'y. The Monroe Cattle Co. *vs.* A. W. Becker. Citation to appellee. Filed February 14, 1889. A. J. Houston, clerk, by W. L. McDonald, deputy. Leake, Shepard & Miller.

456 From the Minutes, January Term, 1889.

THE MONROE CATTLE CO.
vs.
A. W. BECKER. } 137.

FEBRUARY 16, 1889.

On motion of complainant's solicitor, it is ordered that on complainant filing herein its appeal bond that the preliminary injunc-

tion heretofore granted be revived and kept in force during the pendency of the appeal granted & allowed in this suit.

(Signed) A. P. McCORMICK,
Dist. Judge.

In United States Circuit Court for the Northern District of Texas, at Dallas.

THE MONROE CATTLE CO. }
vs. } In Equity.
A. W. BECKER. }

Before the undersigned authority this day personally appeared W. D. Reynolds, to me well known, who, being by me duly sworn, deposes and says that he is well acquainted with the lands described in the bill of complaint in the above-entitled suit and with their value, and that said lands now are and were at the date of the institution of above suit worth over five thousand dollars, and
457 were then and are now worth the sum of eleven thousand dollars and have been worth said sum of money ever since the institution of said suit.

(Signed) W. D. REYNOLDS.

Sworn to & subscribed before me this the 19th day of February A. D. 1889.

[SEAL.] (Signed) D. C. CAMPBELL,
Notary Public, Shackelford County, Texas.

The foregoing is endorsed:

No. 137, ch. Monroe Cattle Co. *vs.* A. W. Becker. Affidavit of W. D. Reynolds as to value of lands in suit. Filed February 21, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

In the Circuit Court of the United States in and for the Northern District of Texas, at Dallas.

THE MONROE CATTLE CO. }
vs. }
A. W. BECKER. }

Know all men by these presents that we, The Monroe Cattle Company, as principal, and W. D. Reynolds and D. C. Campbell, as sureties, all residents of the State of Texas, are held and firmly bound unto the above-named A. W. Becker in the sum of five hundred dollars, to be paid to the said A. W. Becker, his executors or assigns; to which payment, well and truly to be made, we bind ourselves, our executors and administrators, jointly and severally, firmly
458 by these presents. Sealed with our seals and dated this the 19 day of February, A. D. 1889.

Whereas lately, at a circuit court of the United States in and for the northern district of Texas, at Dallas, Texas, aforesaid, in the fifth circuit, in a suit pending in said court between the said Monroe Cattle Company, complainant, and the said A. W. Becker, respond-

ent, a final decree was rendered against the said Monroe Cattle Company, and, the said Monroe Cattle Company having taken an appeal, said appeal has been allowed by the circuit court to the Supreme Court of the United States to reverse the said decree in the aforesaid suit:

Now, therefore, the condition of this obligation is such that if the said Monroe Cattle Company shall prosecute its said appeal to effect and answer all damages and costs occasioned to the said A. W. Becker if it fails to make its appeal good, then this obligation to be null and void; otherwise to remain in full force and virtue.

(Signed) MONROE CATTLE COMPANY,
By G. T. REYNOLDS, *Pres't.* [L. S.]
W. D. REYNOLDS. [L. S.]
D. C. CAMPBELL. [L. S.]

The above bond & surety is hereby approved this the 25th day of February, A. D. 1889.

(Signed) A. P. McCORMICK, *Judge.*

459 STATE OF TEXAS, }
County of Shackelford. }

I, L. M. Murphy, clerk of the county and district court of said Shackelford county, Texas, hereby certify that I am well acquainted with the parties whose names are signed to within bond and know them to be solvent, and that said bond would be accepted by me if tendered to me.

Witness my hand and official seal this the 19th day of February, A. D. 1889.

(Signed) L. M. MURPHY,
Clerk County & District Court, Shackelford Co., Texas.

The foregoing bond is endorsed: No. 137, ch'y. The Monroe Cattle Company *vs.* A. W. Becker. Appeal bond. Filed March 4, 1889. (Signed) A. J. Houston, clerk, by W. L. McDonald, deputy.

460 I, J. H. Finks, clerk of the circuit court of the United States for the northern district of Texas, do hereby certify that the foregoing 459 pages contain a full, true, and correct transcript of the record in cause No. 137, equity, styled The Monroe Cattle Company *vs.* A. W. Becker, lately pending in said court, at Dallas, Texas, except that the original citation to appellee is included in said transcript instead of a copy thereof.

The Seal of the Circuit Court, Northern Dist. Texas, Dallas.

In testimony whereof I have hereunto affixed the seal of said court, at Dallas, Texas, and the signature of the clerk thereof, this Aug. 12th, 1889.

J. H. FINKS, *Clerk of said Court,*
By CHAS. H. LEDNUM, *Deputy.*

Endorsed on cover: N. Texas C. C. U. S. No. 1227. The Monroe Cattle Company, appellant, *vs.* A. W. Becker. Filed September 16, 1889.

147 U.S. 547

Office Supreme Court U. S.
FILED.
OCT 14 1892
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

October Term, 1892.

THE MONROE CATTLE COMPANY,
Appellant,

vs.

A. W. BECKER, Appellee.

No. 87.

Appeal from the Circuit Court of the United States for the Northern District of Texas.

BRIEF FOR APPELLANT.

A. H. GARLAND,
H. J. MAY,
For Appellant.

Press of McGILL & WALLACE, Washington, D. C.

147 U.S. 47

U.S. Supreme Court
FILED
OCT 14 1892
JAMES H. McKENNEY,
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OCTOBER TERM, 1892.

THE MONROE CATTLE COMPANY, Appellant,
vs.
A. W. BECKER, Appellee.
} No. 87.

Appeal from the Circuit Court of the United States for the Northern District of Texas.

BRIEF FOR APPELLANT.

The controversy in this cause is about eleven sections of land, situated in Shackelford County, Texas, and numbered 46, 120, 122, 116, 62, 64, 66, 76, 172, 68, and 96. The sections comprised school lands, and were surveyed in the order named above under certificates issued by the State of Texas to the Texas and New Orleans Railroad Company, to wit, certificates numbered 158, 255, 256, 253, 166, 167, 168, 173, 21, 363, 169, 200.

That these lands were properly in the market for sale on and after January 1, 1882, is alleged in the bill, admitted by the answer, and specially agreed to by the parties (Rec., 5, 19, 60–62).

The sale of the lands was governed by the provisions of the act of the legislature of Texas approved April 6, 1881.

The sections of the law that apply to the survey and sale of the lands are fully set out in the bill and admitted by the answer to be correct (Rec., 2–4, 18–19).

The mode provided by the statute of Texas for the sale and purchase of such lands may be condensed and stated as follows:

1. The purchaser applied to the surveyor of the county in which the land was situated, describing the land that he proposed to purchase, and paid the surveyor one dollar.

2. The surveyor next recorded the application in a book kept for the purpose, and indorsed on the application the word "Recorded," giving the date, page, and volume of the record, and signed his name thereto, and then delivered the application to the proposed purchaser.

3. The purchaser immediately forwarded the application, after it was recorded and indorsed, to the State treasurer, together with one-twentieth of the appraised value of the land.

4. The treasurer then entered a credit in his books for the amount received, giving a description of the land, and then issued his receipt for the money and forwarded the receipt and application to the Commissioner of the General Land Office.

5. The Commissioner of the General Land Office filed the receipt and application in his office and issued his own receipt in lieu thereof, setting forth the amount paid to the treasurer and the quantity and valuation of the land applied for.

6. The proposed purchaser was required to make payment of one-twentieth of the whole and present the certificate of the Commissioner of the General Land Office to the surveyor within ninety days from the date of the record of his application by the surveyor.

7. The said certificate of the Commissioner of the General Land Office when returned to the surveyor was his authority for surveying the land as originally applied for.

8. The surveyor, when he received the certificate of the Commissioner of the General Land office, was required to "enter the land on his books as sold," *and was forbidden to "entertain another application* to purchase said land until notified of the forfeiture of said application *by the failure of the applicant to present to him the certificate of the Commissioner of the General Land Office within ninety days from the date of the record of his application."*

9. Upon the failure of the applicant to present to the surveyor the certificate of the Commissioner of the General Land Office within ninety days from the date of the record of his original application, then, and in that case only, the land was again for sale, and the surveyor was authorized again to receive applications for its purchase.

10. Upon the receipt of the application by the surveyor the purchaser was required to execute his promissory note payable to the governor for the unpaid value of purchase money which, after being registered by the Commissioner of the General Land Office, was delivered to and held by the treasurer for collection.

Another provision of the law forbade the same person from filing on the same land in his own, or any other person's name, more than once in twelve months.

All applications to purchase lands were required to be in the real names of the persons intending to be the actual purchasers.

The lands having been lawfully placed in the market for sale, we will briefly state the facts upon which the parties to this suit rest their respective claims.

J. A. Rhomberg, upon whom the appellee principally relies to establish his claim of title, is a resident of Dubuque, Iowa, but resided temporarily in Texas during parts of the years 1882, 1883, 1884, and 1885, and was engaged in the construction and operation of the Austin and Northwestern Railroad, and was the president, general manager, and finally the receiver of the railroad, during said years (Rec., 171).

No person was permitted to purchase more than seven sections of school lands of the character described in the bill (Rec., 2, par. 4; 18, par. 4). There are allegations in the bill to the effect that Rhomberg made use of the names of certain persons for the purpose of fraudulently evading the provisions of the law and thereby purchasing, for his own use, more sections of land than allowed by law (Rec., 5); and there is strong foundation for these allegations, notwithstanding Rhomberg claims to have acted as the agent of the so-called purchasers, who never saw the lands. Appellee and Rhomberg both admit the following facts as to the applications filed by Rhomberg:

"On the 28th day of February, A. D. 1882, in the name of F. Beeker, for said sections 62, 66, 76, 68, and 64; and on the same date, in the name S. L. Rhomberg, for said sections numbered 120 and 122; and on the same date, in the name of Conrad Beeker, for said sections numbered 116, 162, and 46; on the 29th day of May, A. D. 1882, in the name of J. M. Beechem, for said sections numbered 64, 68, 76, 66, 62, 96, and 116; and on the 30th day of May, 1882, in the name of M. B. Thompson, for said sections numbered 122, 162, 120, and 46; and on the 28th day of August, A. D. 1882, in the name of Margaretta Rhomberg, for said sections numbered 76, 116, 68, 96, 64, and 62; and on the 28th day of August, A. D. 1882 (same date), in the name of F. M. Robinson, for said sections numbered 122, 162, 120, and 46; and on the 25th day of November, A. D. 1882, in the name of Frank Robinson, for said sections numbered 162, 122, 120, and 46; and on the 25th day of November, A. D. 1882, in the name of Maggie L. Rhomberg, for said sections numbered 66, 68, 76, 62, 96, 64, and 116" (Rec., 6, 22, 179–80).

Rhomberg was agent for so many people that he is unable to give the number or names of those for whom he acted (Rec., 179). He can not state when he became acquainted with the Robinsons, or when or how he

became the agent of any of these applicants (Rec., 180–1). He succeeded in buying three and one-half sections of land in his own name, but it was situated in Stonewall County, and not in Shackelford (Rec., 179).

It will be observed that the admitted facts show Rhomberg, by his course of making applications for the purchase of these eleven sections of land, kept them out of the market, and from other purchasers, from February 28 to November 25, 1882, and if his last applications are considered, he controlled the lands for just one year.

He repeats that he was agent, and had no interest in the land, in almost every answer to interrogatories, whether responsive or not, and by inference at least fastens upon himself the allegations that he was evading the law for the purpose of purchasing more land than he was lawfully entitled to (Rec., 173, 174, 175).

The payments of Maggie Rhomberg and Frank Robinson were refused because other applications had been filed for the same lands, and first payments made thereon (Rec., 174). These payments, which were the cause of the refusal, were made by the assignors of appellant (Rec., 175). We repeat, therefore, that there are grounds for these allegations.

Rhomberg's first applications were in the names of F. Beeker, S. L. Rhomberg, and Conrad Beeker. They were made on February 28, 1882, and forfeited by the law for non-compliance therewith.

He next used the names of J. M. Beechem and M. B. Thompson in applications for the same lands, on 29th and 30th days of May, 1882, with like result.

Next, on August 28, 1882, he applied in the names of Margaretta Rhomberg and F. M. Robinson.

Before the ninety days from 28th August had expired, to wit, on 25th November, 1882, other applications were made by Rhomberg for the same lands in the

names of Frank Robinson and Maggie Rhomberg (Rec., 6). These are the applications upon which appellee's title depends.

Maggie Rhomberg transferred her interest in the lands to Klein; Klein transferred to appellee (Rec., 82–3, 89–91, 102–104, 108–111, 115–118, 122–124). Frank Robinson transferred his interest in the lands to Hoglen, who transferred to appellee (Rec., 128–30, 134–5, 138–40, 144–5).

The treasurer of the State of Texas refused for years to recognize the applications of Maggie Rhomberg and Frank Robinson, made on November 25, 1882, and would not receive the payments of purchase money from them.

The reason for such refusal was that applications had been made by F. B. Jacobs and Malinda Fisher for the purchase of such lands, and that they had made payments thereon, and had been recognized as the purchasers thereof (Rec. 45). In 1886, however, he reversed his ruling, accepted the money, and caused patents to be issued to the appellee as assignee (Rec., 12–13; pars. XXXVII, XXXVIII, XXXIX; 45, 200).

The appellee's title rests, therefore, upon the legality of the applications of Maggie Rhomberg and Frank Robinson, filed November 25, 1882. We claim these applications were made when the lands were not on the market for sale under the law, because the ninety days from the date of the immediate former applications had not expired, and for this reason the applications of November 25 were nullities.

The title of the appellant was obtained by a strict and faithful compliance with the law in all respects.

On January 2, 1882, F. B. Jacobs filed applications for surveys 122, 68, 66, 64, 46, 120, 63, and complied with the law governing the purchases. On the 8th of Januar 1882, Malinda Fisher made applications for surveys 76,

162, 116, 96, and also complied with the law (Rec., 10–12). The answer admits the applications were filed as alleged (Rec., 36, par. 29; Rec., 39, par. 31). The indorsements on all the file wrappers show the lands were covered by the applications of F. B. Jacobs and Malinda Fisher on the dates patents were issued to appellee (Rec., 86, 93, 99, 106, 113, 119, 126, 136, 141, 146). These applications were filed more than ninety days after the expiration of the claims of Margaretta Rhomberg and F. M. Robinson, and when the lands were legally subject to sale. And, as above stated, these applicants were for years treated by the treasurer and land commissioner of Texas as the legal purchasers. They made all the payments and entered into all the obligations the law required in the transaction.

F. B. Jacobs and Malinda Fisher conveyed their interest in the lands on March 12, 1883, to the appellant (Rec., 12, par. 36; Rec., 43, par. 36).

Appellant took actual possession of the lands pursuant to such conveyances on March 12, 1883, inclosed them, and has used them for a pasture since that date (Rec., 13, par. 40; Rec., 196, 198, and 52, par. 40).

The appellee, after he received patents for the lands, commenced an action at law for possession.

Appellant filed the bill in this suit to have its equitable title declared, and obtained an injunction *pendente lite*, which has been kept in force during the pendency of this appeal (Rec., 15, 202–3).

The material allegations of the bill are admitted by the answer, and it will not be necessary therefore to make a further detailed statement in the brief.

The court below decreed against the appellant, dissolved the injunction restraining further proceedings in the law case, and dismissed the bill (Rec., 200–1). From this decree an appeal was prayed to the Supreme Court and granted (Rec., 201–2.)

Assignment of Error.

The court below entered a decree in favor of appellee, and dismissed the bill filed against him by appellant, when such decree should have been in favor of appellant, with costs against appellee (Rec., 200–201).

I.

Our contention is that the applications of Malinda Fisher and F. B. Jacobs, filed on the 2d and 8th days of January, 1882, are the legal applications for the purchase of such lands, and that the appellant, as their assignee, is the owner of the same, and was entitled to have the patents issued to it instead of the appellee; and that the applications of Frank Robinson and Maggie L. Rhomberg, made on November 25, 1882, were nullities, because they were filed before the expiration of ninety days from the 28th day of August, 1882, the date upon which Margaretta Rhomberg and F. M. Robinson filed their applications, which were then pending, and could not have been forfeited under the provisions of the statute until the ninety days had fully expired.

According to J. A. Rhomberg, the applications of Margaretta Rhomberg and F. M. Robinson were abandoned by him before the expiration of ninety days from the day they were filed, and before November 25, 1882 (Rec., 173). No record from the office of the surveyor, treasurer, or land commissioner, has been produced showing the abandonment or cancellation of these applications. No such abandonment, cancellation, or forfeiture of the claims of these applicants could have been made, either by themselves, by their agent, Rhomberg, by the State treasurer, by the commissioner of the land office, or by the surveyor. No power was delegated to anyone in this respect. *Non-compliance*

with the statute alone establishes the forfeiture, and subjects the lands again to applications to purchase them.

Notice of forfeiture could not have been given the surveyor until after the expiration of the ninety days, and none was given of the so-called abandonment of Margaretta Rhomberg and F. M. Robinson. The applications of Maggie L. Rhomberg and Frank Robinson, of November 25, 1882, were not and could not have been, lawfully entertained by the proper officer of the State. The section of the law governing the proceedings in regard to applications, and in the matter of the forfeiture of the same, is so explicit that we reprint it here :

"That the purchaser shall immediately forward to the State treasurer the above application, together with the one-twentieth of the appraised value of the land therein designated, and if the land is chiefly valuable for timber he shall forward the whole of the appraised value.

"The treasurer shall enter a credit in his books in the name of the purchaser for the amount so received, giving such description of the land as will identify the same. He shall then issue his receipt for said amount and forward it, with the above-named application, to the Commissioner of the General Land Office, who shall file said application and receipt in his office and issue his receipt in lieu thereof, setting forth the amount paid to the treasurer and the quantity and valuation of the land applied for, which certificate shall authorize the county or district surveyor to survey the land embraced in the original application, *and enter the same on his books as sold, and shall not entertain another application to purchase said land until notified of the forfeiture as hereinafter specified.* Provided, *should the applicant fail to make his first payment of one-twentieth, or the whole, as the case may be, of the appraised value of the land embraced in his application to the treasurer, and present the certificate of the Commissioner of the General Land Office to the surveyor or his deputy within ninety days from the date of the record of his applica-*

tion, then and in that case, the said land shall be again for sale, and the surveyor shall be authorized to receive applications for the same. Provided, that no person shall renew his file nor file on the same land more than once in twelve months, nor shall any person renew his file in the name of any other person. All applications for the purchase of said lands shall be made in the real name of the person intending to be the actual purchaser thereof. (Rec., 3, par. VI)."

It will be observed, upon examination of the statute, that the proposed purchaser commences with a written application to the surveyor; that his application is indorsed, "recorded," and returned to him; that he is to pay to the treasurer one-twentieth of the purchase money, and get from the Commissioner of the General Land Office his certificate and return that certificate to the surveyor within ninety days from the date of the record of his application by the surveyor; and that the law positively forbids the surveyor from receiving another application for the sale of the land until ninety days from the date of the record of the original application have expired.

And to the same effect, but in affirmative form of words, the law declares that if the proposed purchaser fails to present the certificate of the Commissioner of the General Land Office to the surveyor within ninety days from the date of the record of his application, *then*, and in that case, said land shall be again for sale, *and the surveyor shall be authorized to receive applications for the same.*

The certificate of the Commissioner of the General Land Office is the only means furnished by the law to enable the surveyor, who is made the agent of the State to sell the land, to know whether the proposed purchaser has paid the purchase money and performed the other acts entitling him to hold the land.

When the proposed purchaser has made his application to the surveyor, and received it back from him indorsed, he has acquired an exclusive right, for the period of ninety days, to purchase the land, *and the surveyor has lost his power during the same period to receive another application for the purchase of the land.* If ninety days, however, expire without the return to him of the Commissioner's certificate the authority of the surveyor to receive another application is revived. The law, in all its provisions, treats the right to make such purchases, not as a favor to be monopolized by one man, but as a right to be equally enjoyed by all, and hence does not permit an applicant to get a priority over others by his application before the ninety days expire. If that were allowed the pretended applicant, who never intended to purchase, might easily take the land off the market indefinitely by such repeated applications, and thereby preclude *bona fide* applicants from exercising the right of purchasing lands in accordance with the intention and provisions of the law. If, however, the plain letter of the statute, as well as its spirit, shall be followed, the record of the surveyor will show when the ninety days have expired, and when another application for the sale of the land may be received and entertained by him, and every citizen would be afforded an equal privilege and showing in applying for the purchase of the land. This is evidently the intention of the law. The evidence shows that J. A. Rhomberg, in the names of various persons, kept others from purchasing the lands in controversy during the year 1882, by making applications and failing to comply with the law, and at the end of ninety days making other applications with like results.

It is charged in the bill and admitted in the answer (Rec., 6, par. XVI; 22, par. 16), that on the 28th day of August, 1882, applications were made by Margaretta

Rhomberg and F. M. Robinson to purchase the sections of land; it is also charged that these applications were duly recorded by the county surveyor of Shackelford County, on the same day (Rec., 7, 8, pars. XXI, XXIII; Rec., 26, 28, par. 21, 23).

From these acts it resulted that for 90 days, from the 28th day of August, 1882, the lands in controversy (except section 66, which was not applied for on 28th of August) were not in the market, and during that term the surveyor having no authority to receive an application for their sale, an application to purchase them would not only acquire no precedence, but would acquire no right at all to purchase them.

After 90 days from the 28th day of August, 1882 (if within that time the applicants did not return to the surveyor the certificate of the Commissioner), said lands would again be for sale, and the first applicant after the expiration of 90 days from the 28th of August would be the rightful purchaser of them.

Ninety days from the 28th day of August, 1882, had not expired on the 25th day of November, 1882, but they had expired on the 2d day of January, 1883.

The appellee claims the lands in controversy under applications to purchase them made on the 25th day of November, 1882. The appellant claims them under applications made to purchase them on the 2d and 8th days of January, 1883. Appellant's applications to purchase them were the first ever made after the expiration of 90 days from the 28th day of August, 1882, and it and its assignors have complied in all other particulars with the law. *The appellee, nor his assignors, never applied to purchase said lands after the expiration of 90 days from the 28th day of August, 1882.*

The bill states the names of the purchasers whose applications were recorded and delivered on the 28th day of August, 1882, and shows that by their applica-

tions made, recorded, and delivered on that date, the sale of the lands was suspended, and the surveyor was deprived of authority to receive other applications for the sale of any of said lands for 90 days. It is, therefore, immaterial whether or not the applications were really for the benefit of J. A. Rhomberg or whether they were fraudulent. The allegations of the bill admitted by the answer show conclusively that on the 28th day of August, 1882, such proceedings were had as to take the lands off the market. That when 90 days from said date expired said lands were again for sale to the first applicant, and that appellant's vendors were such first applicants (Rec., 6, 22).

It will be thus seen that both appellant and appellee distinctly allege that applications to purchase all the lands in controversy except section 66 were made, recorded, and delivered on the 28th day of August, 1882. They were made through J. A. Rhomberg as agent, both agree and allege. The only difference between appellant and appellee is that appellant alleges that the said J. A. Rhomberg was fraudulently interested in the purchase. Grant that appellant is incorrect with regard to said J. A. Rhomberg's fraud and interest, and it remains *a well-established fact by bill and answer* that on the 28th day of August, 1882, all of said sections, except 66, were applied for and taken off the market for 90 days from said 28th day of August, 1882, and that on the 25th day of November, 1882, said lands were not for sale nor was the surveyor of Shackelford County on that day agent to sell them. Applications made that day for their purchase were a nullity.

Appellant distinctly alleges in paragraphs 29, 30, 31, 32, 33, 34, 35, and 36 that said lands being then vacant and subject to be so purchased on the 2d day of January, 1882, and on the 8th day of January, 1882, F. M. Jacobs and Malinda Fisher filed with the county surveyor of

said county of Shackelford their respective applications to purchase said lands—that is to say, F. M. Jacobs for surveys 122, 68, 66, 64, 46, and 120, and Malinda Fisher surveys 79, 162, 116, and 96. That their applications were on said dates duly recorded, indorsed, and delivered to them by said surveyor. That their applications were at once forwarded to the treasurer of the State of Texas, together with one-twentieth of the appraised value of all of said sections of land. That proper credits were entered by said treasurer for said payments, and his receipts therefor, together with said applications to purchase, were by him forwarded to the Commissioner of the General Land Office in his office, and that he issued his own certificates in lieu thereof in form and manner required by law, which said certificates were duly presented to the county surveyor of said county of Shackelford within 90 days from the date of the recording of each of said applications to purchase, whereupon said surveys were entered on his records by said surveyor as sold. That said purchasers then executed and delivered their respective obligations as required by law for the unpaid installments of purchase money, and subsequently sold and conveyed all of said surveys, so that by purchases made from them the said surveys have all become the property of and are now owned by appellant, and that the annual payments thereon required by law have been made. All of which allegations and facts are distinctly admitted to be true in the corresponding sections of appellee's answer.

A suggestion is made in the case of Martin *v.* Brown, 62 Texas, 469, that a fictitious application to purchase would not have the effect of preventing another person from applying to purchase before the expiration of ninety days. Grant that it would not prevent an innocent third person from so applying nor from holding the land by proving that the pending application was

fictitious, it is not in that case, or by any other authority, held that the fictitious applicant could disregard his own application and himself make another application during the ninety days. If he could his fraudulent application would in that case hold off from purchasing all other persons when they could not know of his fraud, while the fraudulent applicant would take advantage of his knowledge of his own wrong and make an application within the ninety days.

It would be strange doctrine in this case to hold that because J. A. Rhomberg, as agent or pretended agent, made a fraudulent application to purchase on the 28th day of August, 1882, in the names of Margaretta Rhomberg and F. M. Robinson, that he could, before the expiration of ninety days, and hence hold off every other person, as agent or pretended agent for Maggie L. Rhomberg and Frank Robinson, make another application on the 25th day of November, 1882, for the purchase of the same lands. It is idle to argue that such an interpretation can be given the law even if it was conclusively established that the applications of 28th day of August and 25th day of November were both or either of them fraudulent. If the sworn answer of the appellee, on the other hand, is to be believed, there was no fraud, and the applications to purchase on the 28th day of August, being made by bona fide applicants, withdrew the land from sale until after the 25th day of November, and appellant's vendors being the first to apply for it afterwards by their applications on the 2d and 8th days of January, 1883, and by their subsequent compliance with the law, became from said dates equitable owners of the land, and being such equitable owners at and before patents for the said lands were issued to the appellee, such patents, as to the appellant and the owner of said equitable titles, were issued without the authority law.

The reasoning of the court in Bardon v. N. P. R. R., 145 U. S., 735, upon conflicting claims to lands under laws of Congress fully sustain this position as to the law of Texas affecting this case.

It is alleged in the bill and admitted by the answer that the State's treasurer long refused to recognize any right under the applications made on the 25th day of November, 1882, and refused to receive the purchase money for them until the year 1886, but did during all the intervening years receive the annual payments of interest from the vendors of appellant in pursuance of their applications of the 2d and 8th days of January, 1883, but that in the year 1886 the treasurer reversed his ruling and received the whole of the purchase money for said lands, and therefore the Commissioner of the General Land Office issued to appellee, A. W. Becker, patents for all of said lands based upon said applications of November 25th, 1882.

The doctrine that the issuance of a patent cuts off any equitable right adverse to it and existing at and before the date of the patent has been always repudiated and denied in Texas. The case of Martin v. Brown, above referred to, has been mentioned in argument as holding the doctrine that the issuance of the patents put an end to the equitable rights of the appellant in this case. That doctrine would place the Commissioner of the General Land Office above the courts and above the law. No such doctrine is hinted in that case. The language used in the case is as follows:

"To render such an attack on the patent successful, the burden was upon the appellants not only to establish that either their vendors or themselves had an equity in the land at the time of the issuance of the patent, but also to show that such equity was superior to that which eventuated in the patent."

The issuance of the patent does not control or prejudice the case: If the appellant had an equity before the patents were issued and the appellee had none, appellant's equity will prevail over the patent. If appellant and appellee had equal equities the patents would prevail. If both had equities the superior one would prevail.

No equity can arise out of a violation of the law. The law was violated when an application was made to purchase the land on the 25th day of November, because it was less than ninety days from the 28th day of August, the date of the last preceding equity.

Appellant, if he had an equity at all, had it before the patents were issued, and has the superior equity because it was first in point of time, having been acquired when neither the appellee or his vendors had any equity or in fact any right, legal or equitable.

In Todd *v.* Fisher (26 Texas, 239), it is said:

"Where it appears from an inspection of the patent, or the statute under which it is issued, that it was unauthorized by law it can not be regarded in any case as evidence of title.

"When the decision of the Commissioner is erroneous only, it is binding upon all parties except the State or those who have some color of title to, or interest in, the land." (See Bryan *v.* Shirley, 53 Texas, 440.)

In Sherwood *v.* Fleming, 25 Texas, 408–427, the court says:

"It is too firmly settled by the whole currrent of judicial decisions on the point to be now questioned that the issuing of a patent is a ministerial act, and must be performed according to law. If it is issued against the law it is void. An act which is done against the law must be held void."

In Wright *v.* Hawkins, 28 Texas, 452–470, it is said:

"The survey (in a reservation) was contrary to and in violation of law, and hence absolutely void."

If the letter of the statute, forbidding the sale of the land and depriving the county surveyor of authority to receive applications for its sale until the expiration of 90 days from the recording of a former application ; if the spirit of the law is to prevail, intended to give each applicant 90 days to complete his purchase, and at the same time to notify the public when the land may again be for sale, so that all may stand on an equal footing; and if the decisions of the Supreme Court on the subject are followed,—it results that the patents issued to appellee were wrongfully issued, and should be held for naught. It equally results that appellant has title by reason of his purchase and payment for the land.

In the case of Brown *v.* Martin, *supra*, it is correctly held that the payment of the first installment of purchase money and return of the Commissioner's certificate to the surveyor confers title. In any event, it is color of title under our statute, under which the benefit of our three years' statute of limitation may be successfully invoked, and we discuss this question in paragraph II of this brief.

The patents issued to appellee are not printed in the record. It may be presumed, however, that they show on their face that they were issued pursuant to the applications to purchase made on November 25, 1882. It has been successfully shown, we think, that these applications were made and entertained contrary to law, and it is insisted that under these facts and circumstances the patents issued to appellee were void.

It appears to be plain, from the undisputed facts and beyond reasonable doubt, that a mistake of law was made in the issuance of these patents to the appellee, by reason of which appellant has been deprived of its rights. It is not necessary to cite authorities to show relief will be granted in such a case. What we have seen the Supreme Court of Texas has so often decided

in this respect has been announced by this court from Cunningham *v.* Ashley, 14 How., 378; Gibson *v.* Chouteau, 13 Wall., 102, almost continuously at every term to and including the last.

II.

In the 40th paragraph of appellant's bill it alleges actual possession of all the lands in controversy by having them enclosed and used for pasturage, and payment of taxes upon them for more than three years before the beginning of the suit in the law court; such possession beginning on the 12th day of March, 1883, was uninterruptedly kept up under claim of ownership from that date until the filing of appellee's said suit on the 14th day of February, 1887. And appellant now claims title under the three years' statute of limitations (Rec., 13, par. XL). The answer admits these allegations (Rec. 22, par. 40).

The depositions taken by appellant in this case, as well as the admissions contained in appellee's answer, sustain appellant's title under this, his plea of the three years' statute (Rec. 196–198).

The payment of the first instalment of the purchase money and the return of the certificate of the land commissioner to the surveyor conferred title on the appellant, or at least such color of title as entitles him to the benefit of the three years' statute of limitations of the State of Texas.

Martin *v.* Brown, 62 Tex., 469.

And this court has given the same force and effect to mere color of title connected with possession.

Wright *v.* Mattison, 18 How., 50;
Pillow *v.* Roberts, 13 How., 472;
Probst *v.* Pres. Church, 129 U. S., 182.

The legal effect of this payment and the return of the certificate under the Texas law is well illustrated in Witherspoon *v.* Duncan, 4 Wall., 210; Stark *v.* Starr, 6 *Ib.*, 402.

III.

The appellee sets up affirmative matter in paragraphs 44 to 49 of his answer (Rec., 54, 55). The legislature could not have divested the appellant of his vested rights in the lands by the law there set out, nor could any board appointed thereunder have done so by its proceedings. The appellant was in possession of the land at the time the law was in force, and from the treatment of its applications up to that time was reasonably led to believe the patents would be issued to it. The time for bringing suits under the law expired April 14, 1884. It seems, therefore, that appellee should have invoked this law, if it were incumbent upon either of the parties to this suit to do so. Recognition of his claims to the lands were denied by the officers of the State during the existence of this law. He was not in possession of the property. On the other hand, appellant's rights were fully recognized. Why should it have invoked the law? It was not until long after this statute had become obsolete, to wit, in June and July, 1886, that the appellee's rights were mysteriously recognized, and the lands found to be patentable to him, and the patents all hastily issued and delivered (Rec., 86, 93, 99, 106, 113, 119, 126, 136, 141, 146.)

These lands, then, were already appropriated when this legislation was had, and therefore had passed beyond the domain of legislation, and it would be a shameful waste of time to cite authorities to support this position; but, in thinking over it we can not help recalling to

mind the often-attempted legislation, but fruitless at that, in the celebrated *Des Moines Grant* upon which the curtain finally fell *in 142 U. S., 510.*

There is a striking similarity between the facts of this case, as to violating the Texas law limiting the number of sections that may be purchased, and the case of the *Trinidad Coal and Coaking Company, 137 U. S., 160,* arising upon acts of Congress as to the purchase or entry of coal lands, and we commend that decision to the court.

We submit, therefore, that the patents issued to the appellee should be cancelled and annulled as prayed for in the bill; that the decree of the court below should be reversed, etc., etc.

A. H. GARLAND,
H. J. MAY,
For Appellant.

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JAMES H. McKENNEY,
Clerk.

No. 415.

In the Supreme Court of the United States.

THE MONROE CATTLE COMPANY, APPELLANT,

vs.

A. W. BECKER, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, SITTING AT DALLAS, TEXAS.

BRIEF OF APPELLEE, A. W. Becker.

WM. D. WILLIAMS,
Solicitor for A. W. Becker, Appellee.

TEXAS PRINTING AND LITHOGRAFHING CO., FORT WORTH.

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BRIEF OF APPELLEE, A. W. Becker.

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

In the year 1882, and in so much of the year 1883 as we are concerned with in the consideration of this case, the provisions of an act of the legislature of the State of Texas, approved July 8, 1879, as modified by an act amendatory thereof, approved April 6, 1881, were in force, and governed and regulated the sale and disposition of the public school lands of said State. The act of July 8, 1879, contained twenty (20) sections, of which the first eight (8) were amended by the act of April 6, 1881, leaving sections numbered from nine (9) to twenty (20), consecutively, in force and unchanged. (General Laws of the State of Texas for the year 1879, pages 23 to 27, and General Laws of said State for the year 1881, pages 119 to 122.)

Sections six (6), seven (7), and eight (8), of the amendatory act aforesaid, are incorporated in, and form part of, the complainant's bill in this cause, and are to be found in paragraphs five (5), six (6), and seven (7), of said bill, on pages 2 and 3 of the printed record, and on pages 4 to 7 of the transcript.

The acts aforesaid, considered as they stood in 1882 and January, 1883, required that the school lands of the State in each county should be classified and appraised, and that tabulated statements of such classification and appraisement should be filed in the office of the county surveyor, and in the offices of the State treasurer and commissioner of the general land office of the State. This having been done, and the commissioner of the general land office having given notice to the surveyor of the proper county of his approval of the classification and appraisement of the lands in that county, such lands were on the market and open for sale under the remaining provisions of said acts. The particular requirements preliminary to the placing of the state school lands of any county upon the market for sale are set forth in the first five sections of the amendatory act of 1881.

The lands in any particular county being upon the market for sale, each person intending to purchase any portion of the same was required to file with the surveyor of that county, or land district, an application in writing describing the land he desired to purchase. The surveyor was required to record this application in a proper record book in his office, and to indorse upon it a statement signed officially of its record, and return the application so indorsed to the purchaser. The purchaser was required to deliver the indorsed application, together with at least one-twentieth of the appraised value of the land applied for, to the State treasurer, who was then to make certain prescribed entries of the transaction upon account books, to be kept by him in his office, and to issue his receipt for the amount paid him on each application. This receipt and the indorsed

application were then to be delivered by the treasurer to the commissioner of the general land office, who was required to file the same in his office and to issue his certificate in lieu of the treasurer's receipt, which certificate was to show the amount paid the treasurer and the quantity and valuation of the land applied for. The purchaser was required to make his first payment, procure the certificate of the commissioner of the general land office, and return the same to the proper surveyor within not more than ninety (90) days from the date of filing and record of his application. Upon the return of the certificate aforesaid, within the time prescribed, to the proper surveyor, such surveyor was authorized to enter the land upon his books as sold and to make a survey thereof. Field notes of such survey were required to be recorded in the surveyor's office, after which they were to be forwarded to and filed in the general land office. Field notes of the particular survey having been filed in the general land office, the issuance of patent was authorized at any time upon the payment of the full appraised value of the land applied for.

If the first payment upon an application was not made, or if the certificate of the commissioner of the general land office was not returned to the office of the proper surveyor within the ninety days allowed for that purpose, it was provided that "the land shall be again for sale, and the surveyor shall be authorized to receive applications for the same." It was also provided that after the return to the surveyor of the certificate of the commissioner of the general land office, such surveyor "shall not entertain another application to purchase said land until notified of the forfeiture as hereinafter specified." The notification of forfeiture here referred to is that provided for in the 12th section of the original act of 1879, and was to be given to the surveyor by the commissioner of the general land office, after an adjudication of forfeiture by a court of competent jurisdiction for failing to pay the annual installments required. There is

nothing in the two acts in terms forbidding the surveyor from receiving a second application for the purchase of a tract of land on the market for sale within less than ninety (90) days from the record of a prior application therefor.

It was further provided by said acts that "No person shall renew his file nor file on the same land more than once in twelve months, nor shall any person refile or renew his file in the name of any other person. All applications for the purchase of said lands shall be in the real name of the person intending to be the actual purchaser thereof." A purchaser was expressly permitted to sell and convey any land he had applied for at any time after first payment had been made. All conveyances made before the issuance of patent were required to be filed in the general land office, and patent issued to the vendee thereon.

The eleven (11) sections of land in controversy in this suit were part of the school lands of the state of Texas, and in 1882 were situated in Shackelford county, Texas, and were properly on the market for sale, under and in accordance with the provisions of the aforesaid acts of the legislature of Texas. These lands were under the jurisdiction of the surveyor of said Shackelford county, by whom applications for the purchase of the same were required to be recorded.

Under the provisions of the acts of 1879 and 1881, one person was permitted to apply for and purchase as many as and not more than seven (7) sections of land, situated and classified as were those here in controversy.

November 25, 1882, applications in due form for the purchase of seven (7) of the sections of land in controversy, made in behalf of Maggie L. Rhomberg and other applications for the purchase of the (4) remaining sections thereof, made in behalf of Frank Robinson, were filed with the surveyor of said Shackelford county. Said surveyor received and recorded said applications, and endorsed upon them a statement of such record, signed by him officially, and returned the applications, duly

indorsed, to J. A. Rhomberg, who was acting as agent for both the said applicants.

January 18, 1883, less than ninety (90) days after the record of said applications, said J. A. Rhomberg, as agent for said applicants, presented the applications duly indorsed as aforesaid, to the treasurer of the state of Texas, and at the same time tendered to said treasurer the first payments required by the provisions of the said acts of the legislature to be made upon each of said eleven (11) sections of land. The treasurer refused to receive said applications, or to accept the first payments tendered him thereon, giving as his reason for such refusal that previous payments had been made upon each of said sections in the names of other applicants.

The applicants, Maggie L. Rhomberg and Frank Robinson, did not abandon their applications, but continued to press and assert the same, and made repeated tenders and offers of payments thereon to the state treasurer, who, after repeatedly refusing to accept said payments, did, on February 17, 1885, receive the duly indorsed applications of said applicants, and accept their first payments on said lands, making all entries required by law to be made in his office regarding the same, and issued his receipts for the said first payments, and forwarded the applications and receipts to the commissioner ot the general land office of the state of Texas. The commissioner of the general land office proceeded upon said applications and receipts in manner as required by said acts of 1879 and 1881, and issued his certificates in lieu of such receipts, and delivered the same to the agents of said applicants.

Before this, but after the record of the applications of said Maggie L. Rhomberg and Frank Robinson, on January 2, 1883, F. B. Jacobs, and on January 8, 1883, Malinda Fisher filed with the said surveyor of Shackelford county their respective applications, those of the said F. B. Jacobs being for the purchase of seven (7) and those of the said Malinda Fisher being

for the purchase of the remaining four (4) of the sections of land in controversy. The surveyor recorded said applications and endorsed upon them official statements signed by him of such record, returning the applications, duly endorsed, to the said applicants, or their agents.

On January 9, 1883, the applications of F. B. Jacobs were delivered to the state treasurer, and first payments were made on each of the sections applied for in his name. The exact date of the delivery to the state treasurer of the applications of Malinda Fisher is not made clearly to appear, but it is shown that her applications were delivered and first payments were made to the state treasurer upon each of the sections applied for in her name before tender was made to said treasurer of first payments on the respective applications of Maggie L. Rhomberg and Frank Robinson—that is to say, before January 18, 1883. These applications were delivered and the first payments made in the name of F. B. Jacobs and Malinda Fisher before the expiration of ninety (90) days from the record of the applications of November 25, 1882, of Maggie L. Rhomberg and Frank Robinson, and before under the law any record of said last mentioned applications had been made in the treasurer's office, or in the general land office.

The treasurer received the applications and first payments of said F. B. Jacobs and Malinda Fisher, making proper entries thereof in his books, and issued his receipts for such first payments, and forwarded said applications and receipts to the commissioner of the general land office. Said commissioner received and filed said applications and receipts, making due entries thereof upon his books, and delivered his certificates in lieu of said receipts, and such certificates were within less than ninety (90) days after the record of said applications, presented to the surveyor of Shackelford county.

It was because of the payments made upon the applications of said F. B. Jacobs and Malinda Fisher upon each of the eleven

(11) sections of land in controversy that the state treasurer refused to receive the payments tendered him on January 18, 1883, on the applications of Maggie L. Rhomberg and Frank Robinson, and for no other reason. The commissioner of the general land office ruled at that time that first payments would not be received from two different applicants for the same section of land. This ruling was afterward withdrawn, and the tender made for said Maggie L. Rhomberg and Frank Robinson on February 17, 1885, being subsequent to the withdrawal of such ruling, was accepted.

After her first payments had been made and accepted, Maggie L. Rhomberg, joined by her husband, conveyed the sections of land for which she had applied to John H. Klein, and after his first payments had been made and accepted, Frank Robinson conveyed the sections for which he had applied to R. S. Hoglen. At a later date John H. Klein conveyed to R. S. Hoglen the sections which had been applied for by Maggie L. Rhomberg, and still later R. S. Hoglen conveyed to the defendant, A. W. Becker, the entire eleven (11) sections of land in controversy in this suit. Each of said conveyances was executed, acknowledged and delivered as was required by the laws of the state of Texas, and was filed in the general land office of said state as was required by the provisions of the aforesaid acts of 1879 and 1881, and was sufficient upon its face to convey the land it purported to convey.

On different dates, beginning with May 18, 1886, and ending June 28, 1886, the defendant, A. W. Becker, made full and final payments to the treasurer of the state of Texas of the entire principal and all interest remaining unpaid on each of said purchases, and at different times during the remainder of the year 1886, and on January 24, 1887, letters patent in due form of law and executed by the proper officers of the state of Texas were issued to said defendant, granting to him said eleven (11) sections of land.

First payments on the applications of F. B. Jacobs and Malinda Fisher were made in January, 1883, and prior to the 18th of that month. On March 12, 1883, F. B. Jacobs conveyed the sections of land for which he had applied to the complainant, the Monroe Cattle company, and on the same day, Malinda Fisher, joined by her husband, conveyed the sections of land for which she had applied to said complainant.

The complainant enclosed the land in controversy in its pasture and used and occupied the same, paying certain taxes thereon, but it does not appear from the record that said complainant made any further effort to perfect its claim to said land than by the use and occupancy and partial payment of taxes on the same, or that it made any further payments of principal on the purchases under which it held from the state of Texas, or that it made any of the annual interest payments, which, under the said acts of 1879 and 1881, were required to be made on or before the 1st day of March of each and every year upon all purchases of school lands, the appraised value of which had not been fully paid. Such annual payments were necessary upon complainant's purchases, as the purchasers had paid to the state treasury only one-twentieth (1-20) of the appraised value of the lands they applied for.

On February 14, 1887, the defendant, A. W. Becker, filed suit against the said complainant, the Monroe Cattle company, in the circuit court of the United States for the Northern district of Texas, on the law docket of said court, said suit being for the title to and possession of said eleven (11) sections of land, and for damages for its unlawful use and occupation by complainant.

On February 1, 1888, the said complainant filed in said court its bill of equity to restrain defendant from further prosecuting his said action at law, and to remove cloud from complainant's title to the land in controversy, and for the cancellation of the patents granting said land to the defendant,

In his bill of complaint the complainant sets out fully the requirements and provisions of sections 6, 7 and 8 of the amendatory act of 1881, and the applications made thereunder by said Maggie L. Rhomberg and Frank Robinson and certain of the proceedings had upon such applications, including the various conveyances made running from said applicants to said defendant, and also sets out the applications made by F. B. Jacobs and Malinda Fisher, and the proceedings had thereon, including the conveyances from said F. B. Jacobs and Malinda Fisher to the complainant.

Complainant's rights depending upon applications which are later in point of time than the applications upon which the patents to the defendant issued and which were made before the expiration of the ninety (90) days from the date of the record of said last mentioned applications, allowed by the provisions of the aforesaid acts of the legislature in which to procure and return to the county surveyor the certificate of the commissioner of the general land office showing the payments made upon the applications, the attempt is made in the bill of complaint to set up irregularities and frauds practiced by the defendant's applicants sufficient to avoid his title, and justify a decree in favor of the complainant.

The solicitor filing this brief and argument took no part in the trial of this cause in the court below, and knows nothing more of such trial and its result than is to be found in the record. All statements made are based strictly upon the record, and no attempt will be made to answer any argument or suggestion based upon facts not appearing therein.

The record presents no question with reference to the sufficiency of the pleading of either party. Trial appears to have been had solely upon the complainant's bill of complaint, the defendant's answer thereto, and the depositions taken.

The answer of the defendant is very lengthy and contains repeated denials of all allegations of fraud made by the complain-

ant. In addition to this, it sets up certain irregularities and frauds which the defendant alleges were committed by complainant and its applicants for the purchase of the land in controversy, sufficient to avoid its title as to any one in a condition to attack it. The defendant further claims that the complainant's title having been acquired and having its inception subsequent to the irregularities and frauds set up in the bill of complaint, complainant is not entitled to relief because of such irregularities and frauds, if the same were in fact committed. The defendant also sets up the provisions of an act of the legislature of the state of Texas, approved April 14, 1883, creating what was commonly known as "the land fraud board," and validating all purchases of state school lands made before the adoption of said act, upon which suit was not instituted by the direction of said board within a limited period after its appointment, and insists that, even if the purchases upon which the defendant's patents were issued were irregular or fraudulent, the same were healed and validated under the provisions of said act of 1883, and that the complainant, having no prior equity or right in any part of said land, cannot attack as void proceedings which the state has declared valid and legal.

The particulars of the charges, answers and counter-charges will be fully set forth hereinafter, and are for the present stated with the utmost brevity.

This suit was tried at the January term, 1889, and judgment was rendered in favor of the defendant, A. W. Becker, denying complainant the relief sought, and dissolving the temporary injunction theretofore granted restraining defendant from the further prosecution of his action at law against said complainant.

On February 13, 1889, an appeal to the supreme court of the United States was allowed upon security which was given and approved by the district judge. Affidavit as to the value of the land in suit was filed, showing such value to have been at

the institution of the suit and at the making of the affidavit more than five thousand dollars. The record was made out and certified August 12, 1889, and was filed in the supreme court September 16, 1889.

I. The following proposition, with the statement made and authorities cited below the same, is respectfully submitted in support of the judgment of the circuit court, to-wit:

Proposition:

In the bill of complaint herein filed, the complainant charges that certain irregularities and frauds attended the inception of defendant's title and that the same were known to the defendant when he acquired his title to the land in controversy. An answer under oath is not waived. The defendant having filed an answer properly verified and responsive to the allegations made by the complainant, and having in said answer unequivocally denied all frauds and irregularities charged by the complainant, and said answer not having been controverted but, on the contrary, being corroborated and supported by the testimony introduced on the trial, the decree of the circuit court in favor af the defendant is correct and should be affirmed:

STATEMENT.

In no part of complainant's bill is an answer under oath by the defendant waived. (See said bill, printed record 1 to 14, transcript 2 to 25.)

The defendant's answer is verified by his affidavit. (See affidavit, printed record 57, transcript 147.)

It is admitted that on and after January 1, 1882, the lands in controversy were lawfully on the market for sale. (Agreement as to facts, printed record 60 to 62, transcript 153 to 158, and particularly paragraph 9 of said agreement.)

The provisions of the acts of 1879 and 1881 regulating the sale of said lands are correctly stated in the statement of the nature and result of this suit. *Supra.*

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There are eleven sections of land in controversy in this suit; these are known as sections 46, 62, 64, 66, 68, 76, 96, 116, 120, 122 and 162, and are situated in Shackelford county, Texas. Applications for the purchase of any of said sections of land were required by law to be made and recorded by the surveyor of said Shackelford county. (Paragraph 12, complainant's bill, printed record 4 and 5, transcript 9, and the first part of section 6 of the act of 1881.)

On February 28, 1882, J. A. Rhomberg, purporting to act as agent and attorney in fact for F. Beeker, filed with the surveyor of said Shackelford county applications of said F. Beeker for the purchase of five of said eleven (11) sections of land, and on the same day, as agent and attorney in fact for S. L. Rhomberg, said J. A. Rhomberg filed with said surveyor the applications of said S. L. Rhomberg, for the purchase of two (2) of said eleven (11) sections, and, on the same day, as agent and attorney in fact for Conrad Beeker, filed with said surveyor applications of said Conrad Beeker for the purchase of the remaining three (3) of said eleven (11) sections of land. First payments were not made upon these applications, and they were forfeited. On May 29, 1882, said J. A. Rhomberg, as agent and attorney in fact for each of the following applicants, filed applications to purchase with said surveyor as follows, to-wit: For J. M. Beechem for seven (7) of said eleven (11) sections, and for M. B. Thompson for the remaining four (4) of said eleven (11) sections. The applications were also abandoned and forfeited. On August 28, 1882, said J. A. Rhomberg, as agent and attorney in fact for each of the following applicants, filed applications to purchase with said surveyor as follows, to-wit: For Margaretta Rhomberg for sections 76, 116, 68, 96, 64 and 62; and for F. M. Robinson for sections 122, 162, 120 and 46. These applications were also abandoned and forfeited. (Paragraphs 15, 16, 19 and 24 of complainant's bill, printed record 5, 6 and 8, transcript, 9 to 12 and 15; also paragraphs 15, 16,

19 and 24, defendant's answer, printed record 19 to 22 and 29, transcript 35 to 44, 51 and 52, and 65 and 66; also deposition of J. A. Rhomberg, printed record 173 and 181, transcript 386 and 387 and 407.)

Section 66 of the land in controversy was not included in said applications of August 28, 1882. (Paragraph 16, complainant's bill, printed record 6, transcript 11, and paragraph 23 of said bill, printed record 8, transcript 14.)

November 25, 1882, said J. A. Rhomberg, as agent and attorney in fact for the following applicants, filed with said surveyor other applications for the purchase of said lands as follows, to.wit: For Frank Robinson for sections 162, 122, 120 and 46, and for Maggie L. Rhomberg for sections 66, 68, 76, 62, 96, 64 and 116. (Paragraph 16, complainant's bill, printed record 6, transcript 11; paragraph 16, defendant's answer, printed record 22, transcript 44; and see certified copies of the applications which are filed as exhibits to the testimony of R. M. Hall, commissioner of the general land office, printed record 80, 87, 94, 100, 107, 113, 120, 127, 132, 137 and 142.)

January 18, 1883, the first payment on each of these applications was tendered to and refused by the treasurer of the state of Texas, who assigned as his reason for refusing such first payments that other first payments had theretofore been made on the same sections of land upon applications filed by F. B. Jacobs and Malinda Fisher, the particulars of which will be hereinafter fully set forth. (Paragraph 37, complainant's bill, printed record 12, transcript 21 and 22; paragraph 37 of the defendant's answer, printed record 44, transcript 107 and 108; deposition of F. R. Lubbock, state treasurer, answer "B", printed record 65, transcript 166; see also certified copies of endorsements of said refusal, which copies are attached as exhibits to the deposition of R. M. Hall, land commissioner, printed record 81, 87, 94, 101, 107, 114, 120, 127, 132, 137 and 142.)

February 15, 1883, protests in the names of Maggie L. Rhom-

berg and Frank Robinson were filed in each of the land office files, relating to the applications of F. B. Jacobs and Malinda Fisher, for the purchase of the lands in controversy. (Printed record 46, transcript 114 and 115; deposition of R. M. Hall, land commissioner, answer 3, printed record 78 and 79, transcript 193 to 196; exhibits 1 to 18 to the deposition of said R. M. Hall, the same being certified copies of said protests, printed record 147 to 170, transcript 333 to 380; deposition of J. A. Rhomberg, answer 7, printed record 175 to 176, transcript 393 to 395.)

February 23, 1884, tenders of first payments for said Maggie L. Rhomberg and Frank Robinson on the lands in controversy were again made to and were refused by said treasurer, the refusal being for the reasons already stated. March 1, 1884, tenders of full payment on each section of said land were made for said Maggie L. Rhomberg and Frank Robinson, and were refused by said treasurer for the reasons before given. (Printed record 47, transcript 115 and 116; deposition of F. R. Lubbock, answers "D," "E" and "F," printed record 66 and 67, transcript 168 to 170; deposition of J. A. Rhomberg, answer 7, printed record 176, transcript 395; see also exhibits to depositions of R. M. Hall, land commissioner, containing certified copies of endorsements of refusal of tenders.

February 17, 1885, tenders of first payments on said lands were again made for said Maggie L. Rhomberg and Frank Robinson and were accepted by the state treasurer. (Paragraph 39, complainant's bill, printed record 13, transcript 22 and 23; printed record 47, transcript 116 and 117; deposition of F. R. Lubbock, state treasurer, answer "G," printed record 67, transcript 171; exhibits 1 to 11 to said deposition, being certified copies of the accounts kept in the treasurer's office with said Maggie L. Rhomberg and Frank Robinson, showing the date of the first payment accepted, printed record 71 to 76, transcript 179 to 189; exhibits "A" to "M," being certified copies of the

treasurer's receipts attached to the deposition of R. M. Hall, land commissioner, printed record 81 to 143, transcript 200 to 322; for one of said receipts see printed record 81, transcript 200; the others are substantially the same; see also deposition of J. A. Rhomberg, printed record 176, tr. 395.)

February 28, 1885, Maggie L. Rhomberg, joined by her husband, Jacob Rhomberg, conveyed the lands for which she had applied, and on which she had made her first payments, to John H. Klein. March 5, 1885, Frank Robinson conveyed the lands for which he had applied and on which he had made first payments to R. S. Hoglen. March 13, 1885, John H. Klein conveyed the lands deeded to him by Maggie L. Rhomberg to R. S. Hoglen. April 28, 1886, R. S. Hoglen conveyed all the lands in controversy to the defendant, A. W. Becker. Each of these deeds was executed, acknowledged and filed in the manner required by law. Maggie L. Rhomberg and Frank Robinson conveyed for a consideration as recited in their deeds of $132.00 per section. John H. Klein conveyed for a recited consideration of $475.00 per section. R. S. Hoglen conveyed for a recited consideration of $640 per section. In addition to the consideration recited in the deeds, each purchaser assumed the payment to the state of Texas of the balance of the purchase money due it, being $608.00 per section and all accrued interest. (Paragraph 26, 27 and 28, complainant's bill, printed record 9 and 10, transcript 16 to 18; paragraph 26, 27 and 28, defendant's answer, printed record 31 to 36, transcript 72 to 86; see certified copies of several of said deeds, printed record 82 to 85, transcript 202 to 207; the other deeds are the same in form, and can be seen, printed record 89 to 92, transcript 214 to 221, printed record 96 to 146, transcript 226 to 328.)

On the 18th and 21st of May, and the 15th, 16th and 28th of June, 1886, the defendant, A. W. Becker, as assignee of said Maggie L. Rhomberg and Frank Robinson, made to the state treasurer full and final payments of the entire principal and in-

for said lands, nor is it alleged or proved that anything was paid therefor. Neither is there any allegation in complainant's bill nor proof in the record that any of the subsequent annual payments on said lands were made by it, or by its assignors, as required by law. (Paragraphs 29 to 36, complainant's bill, printed record 10 to 12, transcript 18 to 21; paragraphs 29 to 36, defendant's answer printed record 36 to 43, transcript 86 to 106.)

The applications of Malinda Fisher and F. B. Jacobs, made in January, 1883, and the proceedings had thereon, together with the conveyances executed by said last named applicants to the complainant, constitute the complainant's title. Save for the fact that subsequent payments required by law are not shown to have been made, and that no consideration is shown to have been paid the applicants for their conveyances, these applications and proceedings would show a good equitable title, if considered alone. Considered in connection with the applications of Maggie L. Rhomberg and Frank Robinson and the proceedings had thereon culminating in patents to this defendant, complainant's title had its inception at a later date and confers no rights upon complainant. The complainant seeks to avoid the effect of the priority of the inception of defendant's title by certain allegations of fraud, which, together with the answer made thereto by the defendant, and the evidence upon the contradictory allegations, will be next set out.

Complainant's charges of fraud and irregularities will, perhaps, be more readily understood after the following explanation and re-statement of certain of the provisions of the acts of the legislature under which the land in controversy was purchased.

Under these acts, no one person was permitted to purchase directly from the state more than seven (7) sections of land, classified and valued as was the land in controversy, and it was also provided that "all applications for the purchase of said

lands shall be made in the real name of the person intending to be the actual purchaser thereof," and that "no person shall renew his file nor file on the same land more than once in twelve months, nor shall any person renew his file in the name of any other person."

Under other provisions of said acts, each applicant was given ninety (90) days from the date of the record of his application in which to pay the first installment of purchase money due the state upon the land applied for and procure the return to the proper surveyor of a certificate of the commissioner of the general land office showing that such first installment had been paid. Said acts contain no provisions which in terms prohibit other applications for the purchase of a tract of land from being recorded within ninety (90) days next succeeding the making of a prior application therefor, but it is clear that, if payment were made upon the prior application and the certificate of the commissioner of the general land office were returned to the surveyor during the time limited for that purpose as before stated, the second applicant would have secured no right whatever by his application, or by any proceedings which he might have taken thereupon. Under such circumstances, purchasers would not be likely to file second applications prior to the forfeiture of the first.

Complainant charges that in 1882, J. A. Rhomberg determined, by the use of the names of other persons as applicants who did not intend to be actual purchasers of the lands applied for, said J. A. Rhomberg making such applications for his own use and benefit, to acquire more of the state school lands than he was permitted to purchase directly from the state; that he further determined, in violation of the provision against renewing files in the names of other persons, to take advantage of the provision giving ninety (90) days after the record of an application in which to complete the purchase, and from time to time, upon the forfeiture of old applications, to make new ap-

plications for the same lands in the names of other persons not intending to be actual purchasers thereof, and thus to hold for a longer period than was permitted by law the lands he designed ultimately securing for his own use and benefit, and for the time being to avoid the payment to the state of any part of the purchase money, and of the taxes which he knew would be assessed against all lands upon which first payments had been made.

The complainant further charges that all the applications made by said J. A. Rhomberg, in 1882, as hereinbefore set out, for the purchase of the lands in controversy, or parts of the same, were made pursuant to this design, in the names of persons not intending to be actual purchasers of any part of said lands, and for the use and benefit of said J. A. Rhomberg; that, in addition to these, said J. A. Rhomberg, in 1882, made a great many other fraudulent applications for the purchase of school lands in Shackelford and other counties in Texas. No particular statement of these other applications is made in said bill. The allegations regarding the same are in the most general terms only.

Cpmplainant further charges that said J. A. Rhomberg in more than one instance suffered applications for parts of the land in controversy to be forfeited, with the avowed intent of making and having recorded new applications therefor for his own use and benefit. These instances are not pointed out or specified, but are charged in general terms only.

That said J. A. Rhomberg conducted correspondence with the surveyor of Shackelford county about the applications made by him as agent for others for parts of the lands in controversy, and in such correspondence openly claimed that said lands were being purchased for his own use and benefit, and that he intended to suffer his applications to be forfeited, and afterward to make other applications in the names of other persons for the same lands, expecting by the delay to defraud the

state of the collection of its taxes; that said J. A. Rhomberg as an inducement to the surveyor of Shackelford county to aid him in his fraudulent designs paid said surveyor double fees and promised to make him agent for the sale of the lands in controversy.

That each and all of the conveyances of Maggie L. Rhomberg, Frank Robinson, John H. Klem and R. S. Hoglen of lands in controversy as hereinbefore set forth were made at the instance and request of said J. A. Rhomberg and for his use and benefit, he being at the time such transfers were made and thereafter continuing to be the real owner of the lands conveyed; that the consideration recited as having been paid in said deeds of conveyance was inadequate, and was not in fact paid, or, if paid, was paid merely as a consideration for the use of the names of the applicants, Maggie L. Rhomberg and Frank Robinson, and not as a consideration for said lands; that each person taking title to any part of said lands under any of said conveyances did so with knowledge or notice of the fraud and irregularities charged by the complainant.

As against defendant's patents and title, which complainant charges to be void because of fraud as aforesaid, it sets up and asserts its claim under and by virtue of the applications of F. B. Jacobs and Malinda Fisher and their conveyances of the land in controversy to it, and contends that said applications of F. B. Jacobs and Malinda Fisher, though subsequent in point of time, are superior in equity to the defendant's title. The complainant sets out fully the manner of the making of the applications of F. B. Jacobs and Malinda Fisher, and all proceedings had thereon, substantially, but more at length than hereinbefore stated. (From the 15th paragraph to the end of complainant's bill, printed record 5 to 14, transcript 9 to 25.)

To this the defendant, in his answer duly filed and verified, denied that J. A. Rhomberg conceived the fraudulent purposes and designs charged against him by the complainant. (Para-

graph 15, defendant's answer, printed record 19 to 22, transcript 35 to 43.)

Defendant also denied that the applications set forth in the 16th paragraph of complainant's bill, being the applications made by said J. A. Rhomberg, as agent for different persons in 1882, for parts of the land in controversy and hereinbefore specified, were made for the use and benefit of said J. A. Rhomberg. (Paragraph 16, defendant's answer, printed record 22, transcript 43 and 44.)

Defendant also denied that the persons making said applications were not in every instance persons intending to be actual purchasers of the lands applied for. (Paragraph 17, defendant's answer, printed record 22 and 23, transcript 44 and 45.)

In said answer defendant also stated that he had no knowledge or information as to the charge made by complainant that, in the year 1882, said J. A. Rhomberg made other fraudulent applications for the purchase of other state school lands in Shackelford and other counties, and upon belief denied that such other applications were fraudulent, or were made for the use and benefit of said J. A. Rhomberg, and alleged that said J. A. Rhomberg acted in such purchases wholly as the agent of other persons, and never acquired or attempted to acquire any school lands applied for in the names of other persons for his own use and benefit. (Paragraph 25, defendant's answer, printed record 31, transcript 70 and 71.)

Defendant also replied that he had no knowledge or information regarding the charge that said J. A. Rhomberg, in more than one instance, suffered applications to be forfeited with the avowed purpose of making new applications in other names for the same lands for his own use and benefit, but upon belief denies the charge, and especially denies that he suffered any of the applications under which the defendant claims to become forfeited, and avers that he tendered payments thereon for the use and benefit of the applicants within the ninety (90) days

allowed therefore. (Paragraph 19, defendant's answer, printed record 23 and 24, transcript 48 to 51.)

Defendant also replied that he had no knowledge or information as to the admissions and claims of ownership charged to have been made by said J. A. Rhomberg in his correspondence with the surveyor of Shackelford county, and alleged that he, the said defendant, had applied to said surveyor for copies of all such letters, and had been informed that none were on file in said surveyor's office, and upon belief he denies that said letters were written as charged, or are genuine. (Paragraph 18, defendant's answer, printed record 23, transcript 45 to 48.)

Paragraph 20 of said answer contains a further denial of the charge that said J. A. Rhomberg avowed in his correspondence with the surveyor of Shackelford county his fraudulent purposes in making applications for said lands. (Printed record 25, transcript 52 to 54.)

Upon belief the defendant also denied that said J. A. Rhomberg paid the surveyor of Shackelford county double fees, or promised to make him agent for the sale of lands in Shackelford county as an inducement to procure the aid of said surveyor in said Rhomberg's fraudulent designs, and alleges the fact to have been that in 1882 and 1883, H. C. Jacobs was county surveyor of Shackelford county and J. L. Fisher was county judge, and that said county surveyor and county judge were partners as real estate and land agents, doing business as such at the county seat of Shackelford county; that F. B. Jacobs, who was a near relative of the county surveyor, was then postmaster at such county seat, he being the same F. B. Jacobs, through whom complainant claims a part of the lands in controversy; that J. A. Fisher, the husband of Malinda Fisher, through whom complainant claims the remainder of said lands, was then a deputy surveyor of said Shackelford county; that these persons combined to extort money from purchasers of school lands in Shackelford county, and that the firm of Jacobs & Fisher charged for

services, fees and commissions, outside and in addition to the fees allowed the county surveyor by law; that said J. A. Rhomberg did pay said firm such additional fees and commissions for services rendered in filing applications, as was required of him by said firm, and nothing more. (Paragraph 20, defendant's answer, printed record 25 and 26, transcript 52 to 57.)

Defendant also stated in his answer that all payments of fees and tenders of payments of purchase money made by said J. A. Rhomberg were made for the use and benefit of the applicants, and not for his own use and benefit. (Latter part of paragraph 17, defendant's answer, printed record 23, transcript 48.)

Defendant also denied that the conveyances, through which he claims, or any of them, were made at the instance and for the use and benefit of said J. A. Rhomberg, and denied that said J. A. Rhomberg was, at the time of any such conveyance or afterward, the real owner of any of the lands conveyed; defendant also denied that any of said conveyances were made upon inadequate consideration, or without consideration, and alleges that the consideration recited to have been paid in each of said conveyances was actually paid as a consideration for said land and not as a consideration for the use of applicant's names. Defendant also denied that the person to whom said lands were conveyed, and especially that the defendant took such conveyances with knowledge or notice of any fraud or irregularity in the applications for or purchases of said lands, and denied that J. A. Rhomberg has or ever had any interest whatever in said lands. (Paragraphs 26 to 28, defendant's answer, printed record 31 to 36, transcript 72 to 86.)

F. R. Lubbock testified that on May 24, 1882, Margaretta Rhomberg and C. Becker made first payments at his office, he being then state treasurer, upon parts of the lands in controversy, for which they had previously applied, and that he issued receipts therefore, but that, a transfer having been indorsed upon the back of each application, the land commissioner

refused to recognize the same, and the receipts were cancelled. (Deposition of F. R. Lubbock, answer 6, printed record 69, transcript 174 and 175.)

J. A. Rhomberg, who resides in Dubuque, Iowa, testified that in 1881, 1882, 1883, 1884 and 1885 he was president and general manager and latterly receiver of the Austin and Northwestern railroad company, and resided in the state of Texas. (See deposition of J. A. Rhomberg, answers 1 and 2, printed record 171, transcript 382 and 383.)

As to the applications filed August 28, 1882, in the names of Margaretta Rhomberg and F. M. Robinson, said J. A. Rhomberg testifies: that said applications were made by or through him; that he acted as agent for the applicants; that he neither had nor was ever to have any interest in the purchase of said lands or any part thereof; that he paid the surveyor's fees for and on account of said applicants; that, within the time limited by law (ninety days) he tendered the first payments on said applications to the state treasurer, but the treasurer refused to receive the same; that this tender and refusal was only a short time before the expiration of the ninety days after the filing of the application of August 28, 1882; that, to the best of his recollection, these tenders were refused because said witness had no written powers of attorney from the said applicants, and was not able to procure them in time to prevent the forfeiture of the applications. The files were abandoned, and neither of said applicants ever afterward claimed any interest in said lands, or any part of them. (Deposition of J. A. Rhomberg, answer 3, printed record 173, transcript 386 and 387.)

Attention is called to the fact that these are not the applications which culminated in the patents to the defendant, but are of the series charged to have been fraudulently made by J. A. Rhomberg.

This witness further testified that he does not remember how many sections of state school land he applied to purchase in his

own name, but is certain it did not exceed the number allowed by law; that he completed the purchase of only three and one-half sections, three being in Stonewall county, Texas, and one-half section in Knox county; that he cannot state the particulars of the applications made by him as agent for other persons, or name all of his principals, as he kept no record of them, but that he had no interest in such purchases and was paid nothing for his services therein. (Deposition of J. A. Rhomberg, answer to cross 1, printed record 179, transcript 402.)

That Margaretta Rhomberg, Maggie L. Rhomberg, F. M. Robinson and Frank Robinson were each and all of them bona fide living persons, entitled and eligible in every respect to purchase school lands from the state of Texas under the laws governing such sales; three of them lived in Dubuque, Iowa, and the other in Chicago, Ill.; that none of them were under thirty-five years of age; that the husband of Margaretta Rhomberg was witness' brother, and witness and his brother were distantly related to the husband of Maggie L. Rhomberg; neither of the Robinsons were related to witness, or Margaretta or Maggie L. Rhomberg, nor were they as far as witness knows, related to each other; that Margaretta and Maggie L. Rhomberg still reside in Dubuque; that one of the Robinsons is dead, and witness does not know where the other is; that witness knew them sometime before the applications were made; that witness was spending most of his time in Texas, but was north occasionally; that he had great faith in the future of Texas, and considered investments in lands at the price and terms then offered by the state desirable and profitable; that he made his views known to many of his relatives, friends and acquaintances and advised them to buy; that many of them did invest in such lands; that witness was making his headquarters in Texas and could at but little inconvenience look after their interests, and that many of his relatives, friends and acquaintances confided such interests

not refer especially to the lands in controversy, but they were included among the lands mentioned in said letters. By $2 an acre mentioned in the letter as a probable price for said lands was meant that the purchaser should assume 95 cents an acre, due the state of Texas, and pay the applicants $1.05 an acre. There was at that time considerable demand for lands from cattlemen, who were paying good prices, and witness had received letters from Jacobs & Fisher, indicating that the lands he represented were anxiously sought for, and he and the parties he represented thought these lands would sell for the price mentioned. Two years and a half later, when the first sale of any of the lands in controversy was made, the cattle business was depressed and lands in the western part of the state were but a poor and slow sale; interest had accumulated to about $100 per section, which was assumed by the first grantees of the lands in controversy in addition to the payment of the consideration recited in their conveyances; besides this, Maggie L. Rhomberg and Frank Robinson had already been greatly harassed in their efforts to defend and maintain their rights in said lands, and sold at a low price to avoid being drawn into litigation. (Deposition of J. A. Rhomberg, answer to cross 6, printed record 182 and 183, transcript 410 to 412. See also exhibits A, B, C and D to said deposition, printed record 186 and 187, transcript 419 to 421.)

In the cross examination of said witness, J. A. Rhomberg, the complainant asked him if he did not, under date of October 10, 1882, write to said Jacobs & Fisher the following letter, a copy of which was submitted to the witness, to-wit:

"Gentlemen:—Your favor of the 5th instant received. I am perfectly willing to have you act as agents for my lands in Shackelford county, attend to the payment of taxes, etc. I hardly think it advisable though to dispose of any of it yet, but reckon it better to hold on a while longer. You may, however, at any time submit any offer you may receive for it, or a part

of it. There are about fourteen or fifteen sections on which first payment has not yet been made, and on which, if I thought it safe, I would refile, so as to run them into the new year, thus delaying entrance for taxes and saving interest. I don't want to run any chances, however, and unless absolutely safe, I will make payment on them before they run out. What do you think about it? If you could conveniently assist, there would be no difficulty in doing so, of course. Yours truly,

(Signed) J. A. RHOMBERG."

The witness has no recollection of writing or dictating such letter, but says it may have been written by his clerk, who was attending to most of his correspondence and the clerical work in connection with the lands witness was representing. One of the members of the firm of Jacobs & Fisher was at that time county judge of Shackelford county. The other member was deputy county surveyor; witness corresponded with them as land agents, and not as county officers; witness cannot recall any effort having been made to save taxes and interest on said lands, but, if such an effort was made, it was certainly on account of and for the people represented by witness and not for himself; witness thinks the letter may have been written to obtain advice and information, as he has no recollection of any effort to delay entrance for taxes or save interest; that the letters submitted to him form but a small part of the correspondence with said Jacobs & Fisher, and witness believes the production of the remainder of such letters would explain matters and show more clearly and distinctly in what way witness was acting for the people he represented and how he was connected with the applications made by them and with the lands applied for; that the only means of delay was by abandoning old applications and making new ones; that this could not have been the object with the applications of Margaretta Rhomberg and F. M. Robinson, made August 28, 1882, for both of these applicants were willing and anxious to follow up their files, and through witness ten-

to him; that he looked after them without demanding or expecting any pay for his services, or any interest in the lands; that he kept no record of the matters, and has no data on hand to enable him to say just when he became agent for any of these persons; that he was to apply for the lands, pay surveyor's fees, and make first payment to the state treasurer, and was to receive no pay himself at all; that the persons for whom he was acting furnished the money to pay for the lands; that, during the year, 1882, he made several applications in the names of and for other persons to purchase the lands in controversy; that he does not remember how many, nor in whose names; that each and all applications up to and including those of August 28, 1882, were abandoned without making first payments; that in some instances first payments were tendered the state treasurer, but refused because applicants had transferred their files to other persons; that the different applications were not renewals, but were in each and every instance for different persons; that the different applications were not intended to keep other people from purchasing said lands, that being impossible, as the surveyor's office was open to everybody and "first come was first served;" that said applications were intended to procure the lands applied for for the people witness was representing; that witness don't remember how many such applications there were, nor the reason in each case why the applications were abandoned; that one or two of the applications were rejected by the state treasurer because applicants had transferred their applications; that some of the applications were abandoned because applicants were not satisfied with the lands applied for; that, when possible, witness obtained a description of lands applied for and submitted it to the applicants; that if the land did not suit the applicants, they would instruct witness to abandon so many of the applications as were not satisfactory; witness thinks this was the reason for the abandonment of some of the applications for the lands in controversy;

that the applications of Margaretta Rhomberg and F. M. Robinson of August 28, 1882, were abandoned because the treasurer refused to accept first payments thereon, for the reason that witness had no written powers of attorney from said applicants. (Deposition of J. A. Rhomberg, answer to 4th cross-int., printed record 180 to 182, transcript 405 to 408.)

A copy of such letter having been submitted to him said J. A. Rhomberg testifies that he believes he wrote to Messrs. Jacobs & Fisher of Albany, Texas, a letter dated November 22, 1882, which contained the following words, to-wit: "I tendered the treasurer payment on my Shackelford county lands, but he said he could not accept the same on account of instructions from Com'r Walsh not to accept payment on any files filed as agent, unless accompanied by power of attorney from party whom agent is representing. We shall certainly let you handle our lands in that vicinity as soon as we are ready to throw them on the market. I inclose you 18 applications for refiling, and also draft for $36—$18 for surveyor's fees and $18 for your services. The old file expires Sunday next. You will therefore probably have to refile on Saturday. Trusting that you will give this matter your prompt attention, I remain, yours truly, [Signed] J. A. Rhomberg." The 11 sections of land in controversy were included among the 18 sections referred to in that letter. (Deposition of J. A. Rhomberg, answer to cross 5, printed record 182, transcript 409 and 410.)

Said J. A. Rhomberg also wrote to said Jacobs & Fisher, under date December 3, 1882, as follows, to-wit: "Gentlemen —Yours of yesterday at hand. I would rather not put my lands in your county on the market just yet, and prefer to hold them rather than sell for less than $2 per acre: will not forget you when I get ready to sell. The files were duly received, and I am much obliged to you for your prompt attention to the same. Yours, respectfully, [Signed] J. A. Rhomberg." Only a copy of this letter was put before the witness. This letter did

not refer especially to the lands in controversy, but they were included among the lands mentioned in said letters. By $2 an acre mentioned in the letter as a probable price for said lands was meant that the purchaser should assume 95 cents an acre, due the state of Texas, and pay the applicants $1.05 an acre. There was at that time considerable demand for lands from cattlemen, who were paying good prices, and witness had received letters from Jacobs & Fisher, indicating that the lands he represented were anxiously sought for, and he and the parties he represented thought these lands would sell for the price mentioned. Two years and a half later, when the first sale of any of the lands in controversy was made, the cattle business was depressed and lands in the western part of the state were but a poor and slow sale; interest had accumulated to about $100 per section, which was assumed by the first grantees of the lands in controversy in addition to the payment of the consideration recited in their conveyances; besides this, Maggie L. Rhomberg and Frank Robinson had already been greatly harassed in their efforts to defend and maintain their rights in said lands, and sold at a low price to avoid being drawn into litigation. (Deposition of J. A. Rhomberg, answer to cross 6, printed record 182 and 183, transcript 410 to 412. See also exhibits A, B, C and D to said deposition, printed record 186 and 187, transcript 419 to 421.)

In the cross examination of said witness, J. A. Rhomberg, the complainant asked him if he did not, under date of October 10, 1882, write to said Jacobs & Fisher the following letter, a copy of which was submitted to the witness, to-wit:

"Gentlemen:—Your favor of the 5th instant received. I am perfectly willing to have you act as agents for my lands in Shackelford county, attend to the payment of taxes, etc. I hardly think it advisable though to dispose of any of it yet, but reckon it better to hold on a while longer. You may, however, at any time submit any offer you may receive for it, or a part

of it. There are about fourteen or fifteen sections on which first payment has not yet been made, and on which, if I thought it safe, I would refile, so as to run them into the new year, thus delaying entrance for taxes and saving interest. I don't want to run any chances, however, and unless absolutely safe, I will make payment on them before they run out. What do you think about it? If you could conveniently assist, there would be no difficulty in doing so, of course. Yours truly,

(Signed) J. A. RHOMBERG."

The witness has no recollection of writing or dictating such letter, but says it may have been written by his clerk, who was attending to most of his correspondence and the clerical work in connection with the lands witness was representing. One of the members of the firm of Jacobs & Fisher was at that time county judge of Shackelford county. The other member was deputy county surveyor; witness corresponded with them as land agents, and not as county officers; witness cannot recall any effort having been made to save taxes and interest on said lands, but, if such an effort was made, it was certainly on account of and for the people represented by witness and not for himself; witness thinks the letter may have been written to obtain advice and information, as he has no recollection of any effort to delay entrance for taxes or save interest; that the letters submitted to him form but a small part of the correspondence with said Jacobs & Fisher, and witness believes the production of the remainder of such letters would explain matters and show more clearly and distinctly in what way witness was acting for the people he represented and how he was connected with the applications made by them and with the lands applied for; that the only means of delay was by abandoning old applications and making new ones; that this could not have been the object with the applications of Margaretta Rhomberg and F. M. Robinson, made August 28, 1882, for both of these applicants were willing and anxious to follow up their files, and through witness ten-

dered first payments to the state treasurer, who refused to receive the same because witness had no written powers of attorney from said applicants; that witness sent no money to Jacobs & Fisher, except for filing and recording applications, to-wit: $1.00 per application for the surveyor's fees, and $1.00 per application for the service of the said Jacobs & Fisher; that the latter sum was not sent voluntarily, but was expected and demanded by said Jacobs & Fisher; that witness was not paid in any way for his agency in conducting the purchases of the lands in controversy; that he was paid nothing; that nobody paid him; that he was never paid. (Deposition of J. A. Rhomberg, answers to cross-interrogatories 7, 8 and 9, printed record 184 and 185, transcript 413 to 416.)

Said J. A. Rhomberg further testified that he, as agent for Maggie L. Rhomberg and Frank Robinson, made the applications of November 25, 1882, for the purchase of the land in controversy, and that he paid the surveyor's fees for and on account of the applicants; that he had no interest in said lands, nor was he to have any; that Margaretta Rhomberg and Maggie L. Rhomberg were not one and the same person, but were different persons; that F. M. Robinson and Frank Robinson were not one and the same persons, but were different persons. (Deposition of J. A. Rhomberg, answer 4, printed record 173 and 174, transcript 388 and 389.)

That said witness, on January 18, 1882, made a tender to the state treasurer of first payments on said applications of November 25, 1882, of one-twentieth of the appraised value of said lands; that, in making said tender, witness acted as agent for said Maggie L. Rhomberg and Frank Robinson; that the tenders were refused, because of prior payments on said lands upon other applications by other applicants; the reason for this refusal was reduced to writing and endorsed on the applications of Maggie L. Rhomberg and Frank Robinson. (Deposition of J. A. Rhomberg, answer 5, printed record 174, transcript 390.)

That the money tendered the state treasurer upon the applications of Maggie L. Rhomberg and Frank Robinson was that of said applicants, and the tenders were made for them and on their account, and witness had no interest in the lands either before, or at the time of such tenders, or afterward, but was acting as agent for the applicants. (Deposition of J. A. Rhomberg, answer 6, printed record 174 and 175, transcript 390 and 391.)

That when witness learned of the first payments made for F. B. Jacobs and Malinda Fisher, which was at the time he made the first tender for Maggie L. Rhomberg and Frank Robinson, he investigated and learned that the payments had been made by one of the members of the firm of Jacobs & Fisher, whom witness had paid for filing the applications of Maggie L. Rhomberg and Frank Robinson; that witness saw the payments for F. B. Jacobs and Malinda Fisher had been made in great haste, and after the firm of Jacobs & Fisher had unsuccessfully urged the sale of the lands applied for, and was satisfied it was intended to defeat the applications of Maggie L. Rhomberg, and Malinda Fisher; that witness filed written protests against the applications and payments of F. B. Jacobs and Malinda Fisher in proper files in the general land office, and made subsequent tenders of first payments for and on account of Maggie L. Rhomberg and Frank Robinson as already stated; that first payment for said applicants, Maggie L. Rhomberg and Malinda Fisher, were accepted February 17, 1882. (Deposition of J. A. Rhomberg, answer 7, printed record 175 and 176, transcript 393 to 396.)

That witness believes the conveyances by virtue of which the lands in controversy were patented to the defendant, A. W. Becker, beginning with those of the applicants, Maggie L. Rhomberg and Frank Robinson, and ending with the conveyances by R. S. Hoglen to the defendant, A. W. Becker, were

made upon the considerations specified in each of said conveyances, and that such consideration was in every case actually paid, but that witness was not present when said conveyances were made, and knows very little about them; that said J. A. Rhomberg received no part of the consideration for any of said conveyances, and had no interest whatever in said lands, or in any part thereof, and was never at all interested therein; that witness had no interest in the proceeds of sale. (Deposition of J. A. Rhomberg, answers to interrogatories 8 and 9, printed record 177 and 178, transcript 397 to 399.)

The defendant, A. W. Becker, testified that he had no personal knowledge or information of the applications to purchase the lands in controversy made by Maggie L. Rhomberg and Frank Robinson, except such as was shown by the papers and records; that he knows nothing of the transfer from Maggie L. Rhomberg and her husband to John H. Klein, except what is recited in the deeds executed; that he knows nothing about the consideration actually paid, or in anywise about the conveyance by John H. Klein to R. S. Hoglen, except as shown by the recitals in the deeds; that he was not present when any of these transactions took place; that he paid R. S. Hoglen $640 per section for the lands in controversy; that he knows of no other person or persons who were in anyway interested in the sale and conveyance of said land to defendant, except R. S. Hoglen; that no other person was interested with defendant in his purchase, or in the conveyance to him of said lands; that, when said lands were conveyed to defendant, J. A. Rhomberg had, so far as witness knows, no interest, right or claim in the same or any part thereof, and had not, when defendant testified, and had not had, any such right, interest or claim in said lands, or any part thereof; that witness knows nothing of any former interest of said J. A. Rhomberg; that defendant is now individually, the sole and absolute owner of said lands, and that no other person or persons has or have any interest in them, or in

any part of them. (Deposition of A. W. Becker, printed record 190 and 191, transcript 428 to 430.)

Defendant further testified that, when he purchased said lands, he had no knowledge of the different applications made therefor in 1882 and prior to the applications of Maggie L. Rhomberg and Frank Robinson, and that he had no knowledge of the same when he made his final payments thereon; that he was first informed of them at the filing of this suit; that he had no interest in or connection with said applications, or any of them. (Deposition of A. W. Becker, answer to interrogatories 31, printed record 191, transcript 431 and 432.)

That he never at any time had any information of the connection of J. A. Rhomberg with the various applications and purchases beyond what is shown by the records; that he had no connection or interest in any of the acts of J. A. Rhomberg with reference to these or other lands; that his first information came from the filing of this suit; that he bought said lands as an investment; that he paid $1 an acre therefor, and that the money paid belonged to him; that he afterward paid to the state the balance due it of $700 to $800 per section, and that this money also belonged to him; that he had paid taxes on the lands in controversy for the years 1886 and 1887. (Deposition of A. W. Becker, answers to fifth and sixth interrogatories printed record 192, transcript 433 and 434.)

That defendant has known J. A Rhomberg fifteen or twenty years; that he never had one word of conversation with said J. A. Rhomberg, or transaction with him, about the lands in controversy; that he does not know that J. A. Rhomberg ever had any pecuniary interest in said lands, and knows positively that he has now no pecuniary interest in them; that defendant has been interested in nineteen sections of Texas school lands, to-wit: seven sections in Kent county, all sold before this suit, and twelve sections in Shackelford county, of which eleven (11) are involved in this suit; that J. A. Rhomberg never had any

interest in or connection with any of the school lands in which defendant was interested, except such as is shown by the records; that defendant is not related to said J. A. Rhomberg; that defendant, aside from the twelve (12) sections of land in Shackelford county, is worth about $18,000; that said lands are assessed by defendant at $2 per acre. (Deposition of A. W. Becker, answers to cross-interrogatories, printed record 192 and 193, transcript 434 and 436.)

F. R. Lubbock, who was treasurer of the state of Texas at the time his deposition was taken as well as in 1882, 1883, 1884, 1885 and 1886, and, as such treasurer was the official custodian of the books and records of the treasurer's office, testified: that the first payment of $32 required by law to be made on each of the sections of land in controversy was tendered him on each of said sections, on January 18, 1883, by said J. A. Rhomberg, for the account of the purchasers, Maggie L. Rhomberg and Frank Robinson, and that the applications of the said Maggie L. Rhomberg and Frank Robinson to purchase said eleven (11) sections of land were at the same time presented to him, properly endorsed and certified; that witness refused to receive said first payments for the reason that said sections appeared from the books of his office to have been previously paid on by other applicants; that there was nothing on the face of the papers to cause such refusal; that he knows of no applications to purchase said lands prior to those of the said Maggie L. Rhomberg and Frank Robinson; that note of the tender was made on the books in the treasurer's office; that note was also made of the rejection of a tender of payment of interest on said eleven (11) sections on February 23, 1884, said tender having been refused for the same reason as before given; that a tender of the full amount of principal and interest due on said lands on the applications of said Maggie L. Rhomberg and Frank Robinson was made and refused, but no record was made thereof; that a tender of first payments on said ap-

plications was made and received and receipts issued thereon on the applications of Maggie L. Rhomberg, on February 17, 1885, and on the applications of Frank Robinson, on February 23, 1885; that said first payments were followed up as required by law; that full and final payments were afterwards made on said applications, and receipts therefor were issued and filed in the general land office as required by law; witness attaches copies of entries upon his official books showing particulars of the payments made on the applications of Maggie L. Rhomberg and Frank Robinson. (Deposition of F. R. Lubbock, answers to direct interrogatories, printed record 63 to 69, transcript 159 to 176.

The answers of said F. R. Lubbock to the cross-interrogatories propounded by the complainant develop no fact of any importance whatever. (Printed record 69 and 70, transcript 176 to 177.)

R. M. Hall, commissioner of the general land office of Texas, whose deposition was also taken by the defendant, shows the issuance of patents to the defendant as set forth in the agreement as to issuance of patents between complainant and defendant, on page 200 of the printed record, transcript 449 and 450.

In addition to the charges of fraud, complainant further charges that, under the provisions of the acts of 1879 and 1881, regulating the sale of state school lands, each applicant was given ninety (90) days from the date of the record of his application within which to make first payment on the land he had applied for and procure the return to the surveyor of the certificate of the commissioner of the general land office, showing that such first payment had been made, and that no application became forfeited until the expiration of said ninety (90) days; that on August 28, 1882, the applications of Margaretta Rhomberg and F. M. Robinson for the land in controversy were recorded by the surveyor of Shackelford county; that ninety (90)

days from the date of the record of such applications had not expired on November 25, 1882; that on November 25, 1882, said applications of August 28, 1882, had not been forfeited and said land was not subject to sale; that the applications of Maggie L. Rhomberg and Frank Robinson were recorded on November 25, 1882, and were void; that defendant's patents and title having their inception in said applications were also void. (Paragraphs 21, 22 and 23, complainant's bill, printed record 7 and 8, transcript 13 to 15.)

The defendant admitted that ninety days from the record of the applications of August 28, 1882, had not expired on November 25, 1882; that the applications of Maggie L. Rhomberg and Frank Robinson were made and recorded on said November 25, 1882, and before the expiration of said ninety (90) days; but defendant alleges that Margaretta Rhomberg and F. M. Robinson, who made the applications of August 28, 1882, had abandoned and cancelled their said applications before November 25, 1882, and before the record of the applications of Maggie L. Rhomberg and Frank Robinson; that the surveyor of Shackelford county was authorized to receive and record the applications of November 25, 1882; and that if the applications of August 28, 1882, had not been abandoned and withdrawn, or cancelled, the irregularity complained of could not avoid the defendant's title at the complainant's suit. (Paragraphs 21, 22 and 23, defendant's answer, printed record 26 to 29, transcript 57 to 65, and paragraph 29, defendant's answer, printed record 36 to 38, transcript 86 to 90.)

Attention is again called to the fact that these allegations and counter-allegations relate to ten (10) only and not to the entire eleven (11) of the sections of land in controversy, and that section No. 66 was not included among the lands applied for on August 28, 1882. (Paragraph 23, complainant's bill, printed record 8, transcript 14, and paragraph 23, defendant's answer, printed record 28, transcript 61.)

Ninety (90) days from August 28 of any year will expire on November 26 of that year.

The evidence upon this point is as follows, to-wit:

J. A. Rhomberg testified that he acted agent for Margaretta Rhomberg and F. M. Robinson, whose applications of August 28, 1882, were filed by or through witness; that he paid the surveyor's fees on said application for and on account of said applicants; that, within the ninety (90) days next succeeding the record of such applications, he tendered to the state treasurer first payments on the lands applied for; that this tender was refused, and the state treasurer declined to accept said first payments and applications because witness had no written powers of attorney from the applicants; that this was only a short time before the expiration of ninety (90) days from the record of said applications; that there was not time enough to enable witness to procure the required powers of attorney before the expiration of said ninety (90) days; that the applications were abandoned; that since the abandonment of said applications neither of said applicants have ever claimed any interest in the lands applied for, and that neither of them claimed any interest in said lands on November 25, 1882. (Deposition of J. A. Rhomberg, printed record 173, transcript 386 to 387, answer to interrogatory 3.)

Said J. A. Rhomberg further testified that said applications of August 28, 1882, were abandoned; that no record of such abandonment was made, nor was any notice thereof given before the expiration of ninety (90) days from the record of said applications; that it was not customary to record or give notice of the abandoment of applications, nor was it required by law, nor had witness ever heard of an instance in which it was done. (Depositions of A. J. Rhomberg, answer to cross-interrogatories 2 and 3, printed record 179 and 180, transcript 403.)

One of the letters, a copy of which was submitted to said J. A. Rhomberg as part of complainant's interrogatories, and which

the said J. A. Rhomberg testified he believed he had written, bore date November 22, 1882, and was as follows, to-wit: "I tendered the treasurer payment on my Shackelford county lands, but he said he could not accept same on account of the instructions of Commissioner Walsh not to accept payment on any files filed as agent unless accompanied by power of attorney from party whom agent is representing. We shall certainly let you handle our lands in that vicinity as soon as we are ready to throw them on the market. I enclose you eighteen applications for re-filing, and also draft for $36. $18 for surveyor's fees, and $18 for your services. The old file expires on Sunday, next. You will therefore probably have to refile on Saturday next. Trusting that you will give this matter your prompt attention, I remain, yours truly. (Signed) J. A. Rhomberg."

The witness testified that it was his impression that among the eighteen sections referred to in this letter were the eleven (11) sections of land in controversy. (Deposition of J. A. Rhomberg, answer to cross-interrogatory 5, printed record 182, transcript 109.

Complainant offered no evidence as to the alleged fraud or as to the irregularity charged.

The act of 1879 and the amendatory act of 1881 contain no provisions in words prohibiting the filing and recording of subsequent applications during the ninety (90) days next succeeding the record of a former application, nor is it anywhere in either of said acts provided that an application so filed shall be void. But it was undoubtedly the intention of the law that the first application in point of time should be superior in right. The defendant contends that a premature second application was not absolutely void under the provisions of said acts, but was voidable only at the suit of the prior applicant.

AUTHORITIES.

Hughes vs. Blake, 6 Wheat. 453.

Vigel vs. Hopp, 104 U. S., 441.

Beals vs. I. M. & T. R. R. Co. 133 U. S., 290, and authorities cited in these decisions.

ARGUMENT.

Complainant's allegations of fraud were made upon information and belief. This is apparent from the language of the bill, from the testimony introduced upon the trial and from the fact that the complainant did not introduce or offer any evidence in support of his said charges. The charges made by the complainant that the applications of November 25, 1882, were prematurely recorded appear in the bill of complaint as having been made upon personal knowledge, but it is apparent that this personal knowledge extended no further than to facts apparent of record. The records would show the date of each application, the name of the person in whose behalf it was made, and a description of the land applied for sufficient for its identification.

The answer made by the defendant is also based upon information and belief, except in so far as the answer relates to the conveyance of the land in controversy by R. S. Hoglen to the defendant, the consideration paid by defendant for said land, at whose instance and for whose use and benefit said conveyances were made, the knowledge or notice by defendant at the time he bought and at the time he paid for said lands of the frauds and irregularities charged by the complainant, the interest of J. A. Rhomberg in said lands, and other like matters. Complainant's allegations as to these particular matters are fully and pointedly denied, not upon information and belief, or belief only, but upon the defendant's personal knowledge of the truth of the statements in his answer.

The sworn answer upon information and belief offsets the sworn bill which is also, in the particulars referred to, upon information and belief. While as that part of the answer made upon the defendant's personal knowledge, these allegations in the answer can only be overcome by the testimony of

two witnesses, or of one witness with strong corroborating circumstances.

Therefore, complainant cannot recover upon the strength considered as evidence of his bill of complaint, or the weakness considered in that respect of the defendant's answer. Not only is this so, but the evidential force of certain important parts of the answer imposes upon the complainant a very heavy burden.

The complainant adduces no evidence in support of his bill, save as to that part of it which alleges the enclosure for a certain period of time of the lands in controversy.

By his answer the defendant clears himself of all connection with or knowledge or notice of the frauds and irregularities charged by complainant, and shows himself to have been the sole and absolute owner of the lands in controversy, and to have paid an adequate consideration therefor. He further shows that J. A. Rhomberg paid no part of the consideration for the conveyance to defendant of the land in controversy, and received no part of the consideration paid by defendant. The testimony not only does not contradict this part of the answer, but corroborates it fully. These facts are placed beyond contention or argument.

The bill charges and the answer denies that J. A. Rhomberg applied for and purchased these lands for his own use and benefit. Because of the contradictory allegations, the charges made in the bill, to say the least, need to be supported by some degree of proof. The complainant offers none, and it is fair to presume that he had none to offer, while the testimony of the defendant shows absolutely that the charges made in the bill are wholly untrue.

It is charged and denied that each of the applications made in 1882 in the names of different persons for the purchase of the lands in controversy was made for the use and benefit of J. A. Rhomberg. The evidence adduced wholly contradicts this

charge. It is charged and denied that the persons in whose names these applications were made were not in any instance the persons intending to be the actual purchasers of the lands applied for. The evidence shows that in each and every instance these applicants were the persons actually intending to purchase said lands.

It is charged and denied that in his correspondence with the surveyor of Shackelford county, J. A. Rhomberg openly claimed that the lands applied for were applied for by him and for his own benefit and would belong to him; that said J. A. Rhomberg purposely and in some instances avowedly suffered applications to be forfeited, and that he disclosed this purpose in his correspondence with the surveyor of Shackelford county, as well as his own ownership of the lands applied for, and his intention of defrauding the state from the collection of its taxes. J. A. Rhomberg denies having made the applications for his own use and benefit, and testifies that in every case he acted as agent for persons entitled under the law to apply for and purchase the state school lands and intending to become actual purchasers of the lands they applied for. It would then be sufficient, since this testimony is wholly uncontradicted, to say that it is of no consequence whether Mr. Rhomberg did claim the land as his own, or did purposely suffer applications to be forfeited. These acts of his would in no way affect the original applicants, much less his defendant.

But Mr. Rhomberg denies that he made these claims, or disclosed any such purpose as charged, or that he in any case suffered an application to be forfeited for an unlawful purpose. He shows clearly and fully how he acted, how he came to represent applicants for these lands, and what he did for them.

Suspecting a wrongful intent on the part of J. A. Rhomberg and having had access to all his letters to the firm of Jacobs & Fisher, of Albany, Texas, through whom Mr. Rhomberg had made his files for different persons, the complainant shrewdly

attempts to compel Mr. Rhomberg to acknowledge the intent of which he is suspected by complainant, by exhibiting to him on his cross-examination copies of purported letters, some of which are innocent of hints at possible wrong doing, and questioning him as to the authorship of the same. Complainant reasoned that, if Mr. Rhomberg ever had a wrongful intent and if mention is made of it in a copy submitted to him as a copy of his own letter to his correspondents in Albany, since he cannot possibly remember what letters he did write, he will be compelled to admit having written that letter about which he is questioned.

The first copy submitted to the witness, J. A. Rhomberg, is perfectly innocent of criminating matter. He speaks of the lands applied for in Shackelford county sometimes as "my" lands, and sometimes as "our" lands. Agents frequently write of lands controlled by them as though they were absolute and sole owners. An owner never writes of lands belonging to him alone as though they were owned by him jointly with others.

In the second copy submitted, Mr. Rhomberg mentions "my" lands and does not mention "our" lands. The first copy submitted, if it is a true copy of any letter written by Mr. Rhomberg, gives us the key to his use of the word "my" in connection with these lands. In the first copy, we find the word "my" used as meaning the same as the word "our." It was simply and only a means of designating and pointing out the lands to which the writer referred.

The third copy submitted contains a reference to fourteen or fifteen sections on which first payments have not been made, and goes on to say that the writer, if he thought it safe, would re-file so as to run the files into the new year, thus delaying the entrance of the lands for taxes and saving interest. In this letter, the writer again refers to the Shackelford county lands as "my" lands, and his expression of a personal interest is perhaps stronger in this than in either of the other letters.

Mr. Rhomberg testifies that he has no recollection of writing or dictating such a letter, but he says it may have been written by his clerk. Proceeding to assume that it was so written, he states that there were a large number of other letters which passed between himself and the firm of Jacobs & Fisher, and states his belief that such other letters, if produced would show more clearly the reason for having written this.

Circumstances in evidence will throw a good deal of light upon this third copy, and are very persuasive that it was not a genuine letter—that it was in fact used as I have stated above as a means of frightening and compelling Mr. Rhomberg to admit having harbored an intention of which complainant suspected him.

This letter contains a statement that there were then fourteen or fifteen sections of land upon which first payments had not been made. The letter purports to bear date October 10, 1882. The last files had been made August 28, preceding the date of the letter. The next files were made November 25, next ensuing. The files of November 25, 1882, were enclosed in the letter of November 22, 1882, being the first copy submitted to this witness. In this letter of November 22 there were enclosed eighteen applications, a difference of at least three.

The letter of October 10 mentions a desire on the part of the writer to avoid payment on the old applications and re-file on the lands. The letter of November 22 mentions having tendered payments, contrary to the desire or intention expressed in the letter of October 10. Mr. Rhomberg testifies that he had no intention of avoiding payments. It is a fact that he tendered the payments. This fact corroborates his testimony and makes it the less probable that he wrote the letter of October 10, 1882.

The firm of Jacobs & Fisher had been acting for Mr. Rhomberg in all his Shackelford county applications. He had written them many letters. They had then attempted to secure for

themselves lands for which they had before that filed applications sent them by Mr. Rhomberg. They became bitterly interested against him. All the correspondence which had passed between Mr. Rhomberg and this firm was in its possession and open to the defendant. Yet no original letter was produced, and in no other purported copy was any reference made to Mr. Rhomberg's desire to avoid making first payments. If there is an original of the copy placed before Mr. Rhomberg, and had that original been placed before him instead of the copy, it would have been possible and necessary for the witness to have at once stated whether or not he, or his clerk, had written said letter. Is it possible that this would not have so well suited the purpose of the complainant as to submit a copy and render a denial almost impossible? or was there no purpored original to submit?

After the applications of F. B. Jacobs and Malinda Fisher, the firm of Jacobs & Fisher became interested in supporting these applications and the complainant's title. They were at the service of the complainant even further than honesty would permit. Had there been in their possession a genuine original letter written by Mr. Rhomberg of which the third copy submitted him was a true copy, it was very easy for them to have testified to the genuineness of such original letter. Is not the defendant justified in calling attention to the fact that no attempt was made to prove a genuine original letter from Mr. Rhomberg having the contents set out in the copy set before him as a strong circumstance indicative that there was not in existence and capable of proof any such letter?

Even if this letter was in fact written by Mr. Rhomberg, it is clear that any fraudulent purpose he may have had in his mind when it was written was not carried into effect. For Mr. Rhomberg testifies that, after the date of said letter he did tender first payments to the state treasurer, and they were refused. This testimony appears to be borne out by the pur-

ported copy of the letter of November 22, 1882, in which a statement to the same effect is made. The intent was not acted upon, and no matter how fraudulent or wrongful an intent may be, it is in law nothing unless and until it is carried into effect and a fraudulent or wrongful act done pursuant thereto.

It is charged in the bill and denied in the answer that all fees of officers and purchase money paid and tendered on applications for lands in controversy were paid and tendered by J. A. Rhomberg for himself. The evidence is absolutely contradictory of this charge.

It is charged in the bill and denied in the answer that J. A. Rhomberg, for the purpose of unduly influencing the surveyor of Shackelford county, forwarded him double fees with each application and held out to him hopes of further profit by proposing to make the surveyor his agent for the sale of the lands. The evidence shows that Mr. Rhomberg forwarded to the firm of Jacobs & Fisher $2 on each application; $1 of this was to pay the surveyor's fees for recording applications and $1 for the services of the firm. If there was any wrong in this, it was not the fault of Mr. Rhomberg.

It is charged that the applications of November 25, 1882, were prematurely recorded. It is admitted that they were filed one day before the expiration of ninety (90) days after the record of the previous applications, but defendant says that such former applications had been abandoned. It is proved that this is true, and that the former applications had been abandoned before November 25, 1882. In this connection the letter of November 22, 1882, is very forceful. This letter, written by the agent of the applicants of August 28, 1882, inclosing the applications of November 25, 1882, makes mention of the refusal of the state treasurer to accept first payments on the former applications, and treats and refers to them as abandoned. Yet, if these applications had not been abandoned, since the law did not make premature applications void, and since com-

plainant has no equity or claim prior in time to the inception of the defendant's title, and since defendant purchased and paid an adequate consideration for said lands without notice or knowledge of this irregularity, and since the state has waived the same and granted the lands to the defendant, this would not afford the complainant just ground of relief.

Complainant charges and defendant denies that the conveyances made by Maggie L. Rhomberg and Frank Robinson to John H. Klein and R. S. Hoglen were made upon an inadequate consideration and at the instance and request of J. A. Rhomberg, he being still interested in said lands, and that the consideration recited in the conveyances was not, in fact, paid, or, if paid, was only a consideration for the use of their names as applicants and not for the lands. In every respect these allegations are abundantly disproved by the evidence. Considering the litigation which has ensued, the consideration paid was too great, not too small. The conveyances were not made at the instance or request of J. A. Rhomberg. J. A. Rhomberg had not then and had never had any interest in the land. The consideration was for the land and was not for the use of the applicant's names.

The same charges and denials are made with reference to the conveyances by John H. Klein to R. S. Hoglen and the conveyances of R. S. Hoglen to the defendant, A. W. Becker. As to each charge and especially as to the charge as to the conveyances to the defendant, the evidence overwhelmingly contradicts the charges.

Not one of complainant's allegations is sustained or fails of complete contradiction. It is respectfully submitted that, regardless of other matters of defense presented by the defendant, upon a full hearing of bill, answer and testimony, the Circuit Court could correctly render no other decree than that which it did render, and that the same should be affirmed.

II. But the complainant alleges that, in fact and because of the refusal of the state treasurer to receive the payments tendered

him on the applications of Maggie L. Rhomberg and Frank Robinson, the strict letter of the law prevails, and the applications made by these parties became forfeited. (Complainant's bill, paragraph 38, printed record 12 and 13, transcript 22.)

Since complainant's applications were made within less than ninety days after the record of those upon which defendant's patents issued, this charge involves an assumption on complainant's part that the law did not make void a premature application. This assumption applied to the applications of November 25, 1882, would, although they had been shown to have been clearly premature, certainly leave them to stand as not absolutely void, but merely voidable and that only at the suit of the state, or of some prior applicant. This is probably a correct construction of the law. But to follow up the charge:

The defendant admits that first payments on the applications of Maggie L. Rhomberg and Frank Robinson were not made within ninety (90) days next succeeding the record of said applications. But the defendant says that first payments were tendered to the state treasurer within that time, and without fault on the part of the applicants the treasurer refused to receive the same; that said tenders were followed by other tenders made from time to time until one of the same was accepted; and defendant sets forth the particulars of these tenders, which it is not necessary to repeat. (Paragraph 38, defendant's answer, printed record 48 to 51, transcript 119 to 127.)

Upon this, in support of the judgment of the Circuit Court, the defendant submits the following proposition and statement:

Proposition:

The applicants, Maggie L. Rhomberg and Frank Robinson, having, without fault on their part, been prevented from making first payments by the refusal of the proper officer to receive the same, and having by the act of that officer been prevented from doing those things required to be done to complete their

purchases, their default will be excused, and the law will protect them.

STATEMENT.

The provisions of the acts of 1879 and 1881 have already been fully stated, in so far as applicable under this proposition. First payments upon applications were to be made, and a certificate of the commissioner of the general land office, showing the particulars of such first payment, was to be returned to the proper surveyor within ninety (90) days next succeeding the record of the applications. (Printed record 2 and 3, transcript 4 to 6, paragraphs 4 and 6 of complainant's bill.)

F. R. Lubbock, state treasurer, testified that first payments on these applications were tendered him in due form on January 18, 1882; that he refused to receive the same because of the prior payments made by F. B. Jacobs and Malinda Fisher; that the tenders were repeated from time to time, until in February, 1885, payments were finally accepted, after which the other acts and things required by law were at once done and performed. (Deposition of F. R. Lubbock, answers B, C, D, E, F, G and H, printed record 65 to 68, transcript 165 to 172.)

Certified copies of the indorsements of his refusal to accept the first payments tendered him on said applications are attached as exhibits to the deposition of R. M. Hall, commissioner of the general land office, printed record 81, 87, 94, 101, 107, 114, 120, 127, 132, 137 and 142.

J. A. Rhomberg testified to the tender of first payments on said applications within ninety (90) days after the record of said applications, and to the subsequent tenders down to the acceptance of first payments in 1885, and to the steps taken to assert the rights of the applicants. (Answers 5, 6 and 7 of J. A. Rhomberg, printed record 174 to 176, transcript 390 to 396.)

Final payments were made, after which patents issued to the defendant as shown by the agreement, printed record 200, transcript 449 and 450.

There is no evidence contradictory of the allegations contained in defendant's answer.

AUTHORITIES.

Edwards vs. James, 13 Tex., 52.

Booth vs. Strippelman, 61 Tex., 378.

Little vs. Arkansas, 9 How., 314, see particularly p. 333.

III. The defendant also respectfully submits to the court the following proposition, to-wit:

The patents issued by the state of Texas to the defendant, A. W. Becker, relate back to the inception of his right, to-wit: to the record of the applications of Maggie L. Rhomberg and Frank Robinson on November 25, 1882, and cut off the intervening claim now held by the complainant, having its inception in the applications of F. B. Jacobs and Malinda Fisher, which were not recorded until January, 1883.

STATEMENT.

The applications of Maggie L. Rhomberg and Frank Robinson were recorded on November 25, 1882. First payments were tendered within the time limited by law. These were refused. Other tenders were made. One of these was accepted. Final payment was made and patents were issued to the defendant.

The applications of F. B. Jacobs and Malinda Fisher were recorded January, 1883. First payments were made the same month.

All rights of Maggie L. Rhomberg and Frank Robinson are held by defendant by virtue of conveyances hereinbefore set forth. All rights of F. B. Jacobs and Malinda Fisher are held by complainant by virtue of conveyances hereinbefore described.

The one right had its inception November 25, 1882. The other had its inception in January, 1883.

AUTHORITIES.

Starr vs. Starr, 6 Wall., 418.

Shepley vs. Cowan, 91 U. S., 330.

Sturr vs. Beck, 133 U. S., 541. See particularly citation of Shepley vs. Cowan, p. 550.

O'Neal vs. Manning, 48 Tex., 403.

White vs. Martin, 66 Tex., 344, 345.

IV. In the fortieth paragraph of his bill, printed record 13, transcript 23, complainant alleges that it has been in actual possession of the land in controversy, having it enclosed and using it as a pasture, since March 12, 1883, continually claiming ownership and paying state and county taxes annually.

In the fortieth paragraph of his answer, printed record 52, transcript 131 to 133, defendant admits these allegations, except that defendant shows that he, himself, paid state and county taxes on said lands for the years 1886 and 1887.

Lest some claim of title by limitation be asserted under these allegations, the following propositions are submitted, to-wit:

Proposition One:

Complainant's possession prior to the filing of defendant's action at law for the possession of the said land was less than ten and less than five years, and complainant is precluded from claiming the benefit of the ten and five years statutes of limitations of real actions, and can claim the benefit only of the three years statute.

STATEMENT.

Complainant alleges and defendant admits complainant's possession since March 12, 1883. Defendant's action at law was brought February 14, 1887. See printed record 13, paragraph 41 of complainant's bill, and printed record 53, paragraph 41 of defendant's answer. The period of peaceable possession was less than five years.

AUTHORITIES.

Revised Statutes of Texas, Art. 3193, the Statute of Limitation of Five Years.

Art. 3194, the Statute of Limitation of Ten Years.

And Art. 3191, the Statute of Limitation of Three Years.

Proposition Two:

Inasmuch as final payments were not made until in 1886, and patents were not issued until in 1886 and 1887, and until final payments were made or patents good on their face were issued, no individual had such title or color of title as would sustain the three years statute of limitations, and since defendant's action at law for said land was commenced on February 14, 1887, less than three years after final payments had been made or patents issued, and especially since defendant according to his own showing is not entitled to patents to said land and has not a complete title thereto, he cannot claim the benefit of the three years statute of limitations.

STATEMENT.

Final payments were made by defendant in 1886 and patents were issued to him in 1886 and January, 1887. He at once began his action at law, to-wit: In February, 1887. Complainant has never made final payments on any part of said land. Prior to defendant's final payments, in 1886, no individual was entitled to a patent or had a perfect title, even in equity, to any part of the land. If complainant's theory of the case is correct, defendant's final payments did not authorize the issuance of patents, the patents issued are void, and, since complainant has not made or tendered final payments of the applications under which he claims, the land is still state land, and no one is entitled to demand patents thereon. Title is certainly not complete, nor is there "color of title," until there exists at least a *prima facie* right to a patent. At the most that can be claimed, this right to patent did not accrue in this case until final payments were made in 1886. Less than three years elapsed from that time to the filing of suit. This is but a restatement of facts which have been stated before, and no referferences to the record are given.

AUTHORITIES.

Revised Statutes of Texas, Art. 3191 and Art. 3192.

Marsh vs. Weir, 21 Tex., 97.
Sutton vs. Carabajal, 26 Tex., 497.
Smith vs. Power, 23 Tex., 29.
Whitehead vs. Foley, 28 Tex., 268.
Summers vs. Davis, 49 Tex., 541.
Buford vs. Bostick, 58 Tex., 63.
Parker vs. Bains, 59 Tex., 15.
Clark vs. Smith, 59 Tex., 275.
Hammond vs. Coleman, 4 Mo. App., 307.
McIlhenny vs. Ficke, 61 Mo., 329.
Snead vs. Williams, 6 Ga., 158.
Carey vs. Whitney, 48 Me., 576.
Gibson vs. Chouteau, 13 Wall., 92.
Redfield vs. Parks, 132 U. S., 239.
Simmons vs. Ogle, 105 U. S., 271.

A review of the cases cited, and particularly of the opinions of the supreme court of the United States, in Gibson vs. Chouteau, will show the insufficiency of the pleas and facts to sustain any claim that the defendant has by laches lost any rights. In no event could limitation run against the defendant, or the defendant be guilty of laches, prior to acceptance of first payments upon the applications under which he claims. Such first payments were not accepted until in February, 1885, and suit was begun within two years thereafter.

V. The defendant respectfully submits to the court the following proposition, to-wit:

Proposition:

There is a want of intrinsic fairness and honesty in the inception of the complainant's claim of title which does not commend such claim to a court of equity, and the court will not set aside the defendant's legal title in favor of a claim which is in opposition to conscience and in favor of the complainant, which does not attempt to show that it comes into the court with clean hands.

STATEMENT.

The defendant has the legal title, to-wit: The patents issued by the state to him for the lands in controversy. The defendant's title had its origin in applications made for the purchase of the lands by Maggie L. Rhomberg and Frank Robinson. These applications were sent by J. A. Rhomberg, with a letter under date November 22, 1882, to the firm Jacobs & Fisher, of Albany, Shackelford county, Tex. For and on account of the applicants J. A. Rhomberg sent said firm of Jacobs & Fisher $1.00 per application for the surveyor's fees and $1 per application for the services of that firm. See copy of letter of J. A. Rhomberg, part of fifth cross interrogatory, printed record 182, transcript 408 and 409, and the answer of J. A. Rhomberg to said interrogatory, same page. See also answer of J. A. Rhomberg to part of eighth cross interrogatory, printed record 185, transcript 415. Jacobs & Fisher attended to this work for J. A. Rhomberg, who was acting as agent for the applicants, and took pay for their services. Jacobs & Fisher wrote to J. A. Rhomberg frequent letters, urging him to permit them to sell said lands upon offers and at prices which they submitted to him. See letters of Jacobs & Fisher, printed record 186 and 187, transcript 418 to 421, and answers of J. A. Rhomberg to interrogatory 7, printed record 175 and 176, transcript 393 to 396, and to sixth cross interrogatory, printed record 182 and 183, transcript 410 and 411.) J. A. Rhomberg declined to sell. See same references. Then, in January, 1885, F. B. Jacobs and Malinda Fisher made their applications for the purchase of these lands. F. B. Jacobs was a brother of the county surveyor, and the latter was a member of the firm of Jacobs & Fisher. Malinda Fisher was the wife of John A. Fisher. John A. Fisher was a brother of the other member of the firm of Jacobs and Fisher, and was himself a deputy county surveyor. See preceding statements for references to record.

H. C. Jacobs, the county surveyor and brother of one of the

applicants in person made first payments on these lands. Said first payments were hurriedly made, evidently for the purpose of anticipating the payments on the prior applications. See answer 7 of J. A. Rhomberg, printed record 175 and 176, transcript 393 and 394.

These facts are charged against complainant in defendant's answer. Printed record 26, transcript 54 to 56. It was also charged in said answer that the applications of F. B. Jacobs were made for the use and benefit of H. C. Jacobs and complainant. (Printed record 37, transcript 89.) That, under the provisions of article 118 of the penal code of the state of Texas, said applications were void as having been made for the benefit of one prohibited from applying for the purchase of state school lands. (Printed record 37 and 38, transcript 89 and 90.) That H. C. Jacobs made the first payments on said applications for his own use and benefit. (Printed record 38, transcript 90 and 91.) That Malinda Fisher's applications were for the joint use of herself and her husband, John A. Fisher—that is, for their "community estate" as it is termed in Texas. That John A. Fisher was a deputy county surveyor and prohibited by article 118 of the penal code of Texas from applying to purchase said lands. (Printed record 39 to 41, transcript 95 to 98.) That first payments on the applications of Malinda Fisher were made for the use and benefit of her husband and of the complainant. (Printed record 41, transcript 100.) That the conveyances to the complainant by F. B. Jacobs and Malinda Fisher were made without consideration, or, if any consideration was paid, it was for the fraudulent use of applicant's names and not for the land itself, and that the complainant had notice of all these facts. (Printed record 43, transcript 105 and 106.) These charges were verified by the affidavit of the defendant, and were made upon information and belief. They were denied by unsworn replication only, and complainant made no attempt to explain the

circumstances which certainly tend very much to show bad faith and an utter want of intrinsic fairness and common honesty.

As this proposition is based upon a fundamental principle universally recognized, no authorities are cited.

VI. It is hardly necessary to repeat that defendant's title had its inception in the applications of Maggie L. Rhomberg and Frank Robinson. The record does not show whether these applicants did, or did not, upon the acceptance of their first payments, execute to the state their obligations for the remainder of the purchase money for the lands applied for. Assuming that they did not execute such obligations, it has been held by the supreme court of the state that their rights were not thereby forfeited.

AUTHORITIES.

Canales V. Perez, 65 Tex., 291; same case, 69 Tex., 676.

Defendant submits the following proposition:

VII. If it had been established beyond controversy that defendant had participated in practicing a fraud upon the state and upon the public by making fictitious applications for the purpose of preventing others from purchasing the land in controversy, this would not vitiate or avoid applications afterward made and carried into effect for the purchase of said lands, or invalidate the patents issued to defendant.

STATEMENT.

It is hardly necessary to make a statement, since the facts pertaining to the proposition have already been stated repeatedly.

AUTHORITIES.

Martin vs. Brown, 62 Tex., 467, see pages 469 and 470.

Martin vs. Brown, 62 Tex., 487 and 488.

Defendant also submits the following proposition, to-wit:

VIII. The patents issued to the defendant are regular upon their face and were executed by the proper officers of the state, and no matter what irregularities, illegalities and frauds intervened

and formed part of the proceedings which eventuated in their issuance, since said patents were executed by officers authorized to make the grant and whose duty it was to pass upon the sufficiency of the evidence and regularity of the proceedings, the validity of said patents can be questioned by no one except it be by the state, or by some person having a prior equitable interest in the land.

STATEMENT.

It is thought sufficient to refer to former statements for facts pertinent to this proposition.

AUTHORITIES.

Todd vs. Fisher, 26 Tex., 242.
Johnson vs. Smith, 21 Tex., 729.
Martin vs. Brown, 62 Tex., 467 to 470.
Martin vs. Brown, 62 Tex., 487 and 488.
Gullett vs. O'Connor, 54 Tex., 416.
Bryan vs. Shirley, 53 Tex., 459.
Johnson vs. Eldridge, 49 Tex., 521.
McKinney vs. Grassmeyer, 51 Tex., 376.
Decourt vs. Sproul, 66 Tex., 368.
League vs. Rogan, 59 Tex., 427.
Field vs. Seabury, 19 How., 323.
Spencer vs. Lapsley, 20 How., 264.
Ehrhardt vs. Hogaboom, 115 U. S., 67.
Hughes vs. United States, 4 Wall., 232.

IX. The defendant also submits to the court that since the complainant seeks to charge the defendant as to the patents issued to the latter as trustee for the former, it is not sufficient to show that the patents should not have issued to the defendant, but it must be made to appear that they should have issued to the complainant, and, as it appears from the record that the complainant has not complied with the conditions of his pretended purchase of the lands in controversy, and is not entitled to demand patents therefor from the state of Texas, said com-

plainant cannot maintain this suit.

STATEMENT.

The complainant asserts and the defendant admits that the complainant's applicants made first payments of one-twentieth of the value of the land applied for to the state of Texas within the time allowed by law. But no other payments of any part of the purchase money for the lands in controversy appears to have been made, either by said applicants or by complainant, or by any other person for them or either of them. In fact, such other payments were not made, and complainant is not entitled to patents from the state of Texas.

AUTHORITIES.

Bohall vs. Dilla, 114 U. S., 47.

X. The defendant submits also the following proposition:

The state of Texas, by an act of its legislature, approved April 14, 1883, in express terms validated the applications for the purchase of the land in controversy made by the applicants, Maggie L. Rhomberg and Frank Robinson, whose rights are now held by the defendant, and such validation related back to the record of said applications on November 25, 1882, and the complainant, having no prior claim to said land and having acquired the claim of his applicants, subject to the rights of the prior applicants, Maggie L. Rhomberg and Frank Robinson, cannot complain of the validation of the prior applications.

STATEMENT.

By an act of the legislature of the state of Texas, duly approved April 14, 1883, provision was made for the appointment of a land board, to consist of three members, together with the governor and comptroller of the state. It was made the duty of this board to inquire into and investigate all purchases of state school lands made under the acts of the legislature of 1879 and 1881. If the board found any of such purchases to have

been made in violation of law, it was required to report the same to the attorney-general of the state, who was charged with the duty of instituting suits against all fraudulent purchasers and their vendees buying with notice. The act required all such suits to be brought within twelve months from the time said act went into effect. It further provided that "in all cases where files have been made prior to February 3, 1883, upon any of the lands set apart for the benefit of the common school fund, and authorized to be sold under the acts of 1879 and 1881, and the first payment on said lands, as provided by said act, has been made, or a tender thereof made to the treasurer and refused by him, and the commissioner of the general land office has failed or refused to file the application of the purchaser and issue his certificate, as provided for in the seventh section of the act approved April 6, 1881, and to complete the sale of the land so applied for, if the state shall not bring suit to set aside and annul such purchase within twelve months from the time this act goes into effect, it shall be the duty of the commissioner of the general land office to complete and perfect the sale of said land so purchased in accordance with the provisions of the above recited act of 1881."

This act went into effect from and after its passage, to-wit: April 14, 1883. The land board provided for was appointed and made the required investigation, and ordered such suits brought as it thought proper. The board investigated the applications for purchase made by Maggie L. Rhomberg and Frank Robinson, and did not find said applications to have been illegal or fraudulent, and did not report the same for suit, and no suit was brought on said applications.

See printed record 54 to 57, transcript 136 to 145, paragraphs 44 to 49 of defendant's answer.

For the act in full, see general laws of Texas for 1883, pages 106 to 109.

It is respectfully submitted that the judgment of the circuit court should be affirmed.

WM. D. WILLIAMS,

Solicitor for A. W. Becker, Appellee.